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FILED
JUN 7 1957
JOHN T. FEY, Clerk

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No. [redacted]

In the United States Court of Appeals for the Fourth Circuit

Nos. 7284 and 7285

UNITED STATES OF AMERICA, OWNER OF THE U. S. S. "RUCHAMKIN," APPELLANT

v.

S. S. "WASHINGTON," HER ENGINES, ETC., THE TEXAS COMPANY, ETC., APPELLEES

UNITED STATES OF AMERICA, OWNER OF THE U. S. S. "RUCHAMKIN," APPELLANT

v.

THE TEXAS COMPANY, OWNER OF THE TANKER "WASHINGTON," APPELLEE

APPENDIX FOR APPELLANT

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S. S. "WASHINGTON," HER ENGINES, ETC., THE TEXAS COMPANY, ETC., APPELLEES

UNITED STATES OF AMERICA, OWNER OF THE U. S. S. "RUCHAMKIN," APPELLANT

v.

THE TEXAS COMPANY, OWNER OF THE TANKER "WASHINGTON," APPELLEE

APPENDIX FOR APPELLANT

In the United States District Court for the Eastern District of Virginia at Alexandria

In Admiralty—No. 780

UNITED STATES OF AMERICA, OWNER OF U. S. S. "RUCHAMKIN," LIBELANT

v.

S. S. "WASHINGTON," HER ENGINES, BOILERS, TACKLE, ETC., IN REM; AND AGAINST THE TEXAS COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF NEW YORK, OWNER OF THE S. S. "WASHINGTON," RESPONDENTS

LIBEL IN REM AND IN PERSONAM

To the Honorable, The Judge of the Court Aforesaid:

The libel of the United States of America, a sovereign, and owner of the U. S. S. *Ruchamkin* (APD-

89), against the S. S. *Washington*, her engines, boilers, tackle, etc., and against The Texas Company, a corporation organized and existing under the laws of the State of New York, owner of the S. S. *Washington*, in a cause of collision and damage, civil and maritime, alleges on information and belief, as follows:

First. That at all times hereinafter mentioned, libelant was and still is a corporation sovereign and the owner of the U. S. S. *Ruchamkin* (APD-89).

Second. That the said U. S. S. *Ruchamkin* (APD-89) is a steel-hulled, high speed destroyer transport, 306 feet in length, with a beam of 37 feet, draft 13 feet, and standard displacement of 1,450 tons; which at all times prior to the collision herein described, was tight, staunch, strong, seaworthy, and in all respects properly manned, equipped, and supplied.

Third. That the S. S. *Washington* is a steam driven, tank vessel of 10,195 gross tons, official No. 243111 of Wilmington, Delaware, with a length of 523 feet 6 inches, and a mean draft of about 30 feet.

Fourth. That the S. S. *Washington* is now or will be during the pendency of process herein within this District and within the jurisdiction of this Honorable Court.

Fifth. That at all times hereinafter mentioned, the respondent, The Texas Company, was a corporation organized and existing under the laws of the State of New York, with an office and place of business at North Fairfax and Pendleton Streets, Alexandria, Virginia, and was the owner of the S. S. *Washington*.

Sixth. That on the evening of 13-14 November 1952, the U. S. S. *Ruchamkin* was operating with other naval vessels off the Virginia capes in a training operation "Seascape" as a vessel in the screening unit in this formation. The *Ruchamkin*, after sorti-

ing independently on a separate assignment, was maneuvering to regain her designated position in the screen of vessels. Shortly after 0200 on the morning of 14 November, and while so maneuvering to regain her position in the screen, the lights of a vessel, which later proved to be the S. S. *Washington*, were sighted forward of the *Ruchamkin's* port beam. The S. S. *Washington* crossed through the screen of Navy ships and was observed to close distance with the *Ruchamkin*. The *Ruchamkin*, as the privileged vessel in a crossing situation, maintained course and speed until it became apparent that the S. S. *Washington* was continuing across the course of the *Ruchamkin* and that the *Washington* could not by her action alone avoid the collision. The *Ruchamkin* then took action *in extremis* and put her wheel hard to starboard but the *Washington* continued on and rammed the port side of the *Ruchamkin*, causing extensive damage to the naval vessel with the loss of seven lives and personal injury to approximately thirty-one military personnel.

Seventh. That the aforesaid collision and the damages resulting therefrom were not caused by or contributed to by any fault or negligence on the part of the *Ruchamkin* or those in charge of her, but were caused solely by the sole fault and negligence of the S. S. *Washington*, her master and crew and those in charge of her and The Texas Company, its agents and employees, in the following respects, among others, which will be brought out upon the trial:

(1) That the S. S. *Washington* was not in charge of competent persons;

(2) That the S. S. *Washington* failed to keep a competent or efficient lookout;

(3) That she failed to sound proper whistle signals;

(4) That she negligently failed to take timely or

proper action to maneuver to avoid risk of collision as required by the burdened vessel in a crossing situation;

(5) That she negligently failed to maneuver to avoid crossing ahead of the U. S. S. *Ruchamkin* where the naval vessel was the privileged vessel in a crossing situation;

(6) That the S. S. *Washington* was proceeding at an immoderate rate of speed under the circumstances;

(7) That the S. S. *Washington* ignored the requirements of prudent seamanship in her navigation;

(8) That the S. S. *Washington* negligently and improperly maneuvered across and through a screen of naval vessels in convoy and negligently and recklessly came into collision with one of the vessels in the convoy, the U. S. S. *Ruchamkin*.

(9) That the S. S. *Washington* negligently and improperly maneuvered through a naval convoy which she knew, or should have known, was present in the area, and thereby did cause her presence to be confused with other vessels in the convoy and so causing collision with the U. S. S. *Ruchamkin;* and

(10) That the S. S. *Washington* did negligently fail to make any proper use of her radar.

Eighth. That by reason of the premises and as a result of the collision, libelant has sustained damage consisting of the cost of repairs, the loss of use of the vessel, and other substantial expenses necessarily incurred and to be incurred as a result of the collision. Libelant has also sustained or may sustain loss by reason of payment of death gratuity or pensions to these said injured or deceased military personnel in such amount as may be determined. As nearly as can now be estimated the collision damage to the *Ruchamkin* amounts to over $800,000 for repair plus detention and other expenses. The amount of the

personal injury, death, and property damage claims for which the United States may be found liable has not as yet been ascertained, nor has the amount of death gratuities and pension benefits been established, and libelant seeks leave to include these expenses as soon as they have been determined. That no part of these expenses which have been incurred or will be incurred has been paid although payment thereof has been duly demanded.

Ninth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, libelant prays that process in due form of law and according to the practice of this Honorable Court may issue against the S. S. *Washington*, her engines, boilers, tackle, etc., and that all persons claiming any interest therein may be required to appear and answer on oath all and singular the matters aforesaid and that a decree may be entered in favor of the libelant for the amount of the damages alleged aforesaid with interest and costs, and that the said S. S. *Washington* may be condemned and sold to satisfy the damages of the libelant herein, and that process in due form of law according to the practice of this Honorable Court may issue against the respondent, The Texas Company, citing it to appear and answer on oath the matters aforesaid and that this Honorable Court may adjudge and decree that the respondent, The Texas Company, pay to the libelant its damage as aforesaid with interest and costs, and that libelant may have such other and further relief in the premises as in law and justice it may be entitled to receive and the Court competent to give.

_____,
U. S. Attorney,
Proctor for Libelant.

In the United States District Court for the Eastern District Court of Virginia at Alexandria

In Admiralty—No. 780 (Civil Docket)

UNITED STATES OF AMERICA, OWNER OF THE U. S. S. "RUCHAMKIN," LIBELANT

v.

S. S. "WASHINGTON," HER ENGINES, BOILERS, TACKLE, ETC., IN REM; AND AGAINST THE TEXAS COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF NEW YORK, OWNER OF THE S. S. "WASHINGTON," RESPONDENTS

Answer of the Texas Company

To the Honorable Albert V. Bryan, Judge of the Court Aforesaid:

The answer of respondent The Texas Company to the libel of the United States of America, as owner of the U. S. S. *Ruchamkin,* in a cause of collision and damage, civil and maritime, alleges on information and belief as follows:

First. The allegations of the first article of the libel are admitted.

Second. The allegations of the second article of the libel are admitted, except as hereinafter specifically denied.

Third. The allegations of the third article of the libel are substantially correct and are admitted.

Fourth. The allegations of the fourth article of the libel are denied.

Fifth. The allegations of the fifth article of the libel are denied, in that respondent The Texas Company was and still is a corporation organized and existing under and by virtue of the laws of the State

of Delaware with its principal place of business at 135 E. 42d Street, New York, N. Y., and it was and is the owner of the tanker *Washington*. Respondent admits that it is doing business in the State of Virginia and has an office therein in the City of Alexandria.

Sixth. The allegations of the sixth article of the libel are denied except as expressly hereinafter admitted.

Seventh. The allegations of the seventh article of the libel are denied.

Eighth. The allegation of the eighth article of the libel that the libelant sustained damage as a result of the collision is admitted, but this respondent denies that it has any knowledge or information sufficient to form a belief as to the other matters alleged in such article.

Ninth. This respondent admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court, but denies each and every other matter alleged in the ninth article of the libel.

Further answering, this respondent alleges that the true circumstances surrounding the collision were as follows:

Tenth. On November 9, 1952, the tanker *Washington*, laden with a cargo of refined petroleum products, left Artreco, Texas, for Philadelphia, Pennsylvania. She proceeded without incident until the early morning of November 14, 1952. At that time she was following the customary shipping lane for merchant vessels bound up the Atlantic Coast for Philadelphia, and was some fifty-five miles at sea east and south of Cape Henry, Virginia. Her second officer was on watch on the bridge. A qualified seaman was at the wheel, and the lookout, station forward on the bow, was attending to his duties. The *Washington* was

exhibiting the regulation lights which were properly set and burning brightly. The weather was dark and clear.

As the *Washington* was proceeding on course 009° shortly before 2:00 A. M., a number of white lights became visible on the horizon, extending from the starboard beam to one or two points on the starboard bow. Those lights seemed to be on fishing vessels, and although a considerable distance away they were kept under observation. A few minutes later two red lights appeared on the starboard bow, apparently from two vessels which were heading diagonally across the bow of the *Washington* from starboard to port and which were closer than the white lights. Although the *Washington* was then on course that would clear the two vessels, her heading was changed slightly to starboard in order to give them ample room. When they appeared to be well clear and passing by her port bow, the *Washington* was brought back to her original heading of 009°. At about this time a number of colored side lights, evidently on vessels theretofore showing white lights, became visible. All were a safe distance away, drawing abaft the beam, and on courses to pass astern of the *Washington*. One vessel, however, emerged from behind the others broad on the *Washington*'s starboard bow, showing a red light and proceeding at a much higher rate of speed than the others, apparently attempting to cross ahead of the *Washington* from starboard to port. The rudder of the *Washington* was thereupon put hard left and she sounded two blasts of her whistle, followed almost immediately by several short blasts. The approaching vessel, which subsequently proved to be the U. S. S. *Ruchamkin*, continued at high speed, without sounding any signal, and in attempting to cross ahead of the *Washington*, brought

her port side aft of amidships in contact with the starboard bow and stem of the *Washington*, inflicting serious damage to both vessels. The collision occurred shortly before 2:15 A. M., the *Washington's* time, about fifty-five miles east and south of Cape Henry.

When the vessels came in contact with each other, the engines of the *Washington* were stopped. She remained in contact with the *Ruchamkin*, and when the latter requested her to back away, the *Washington* inquired whether the *Ruchamkin* was in need of assistance, and was informed that she was not. When again requested to back away, the *Washington* complied but remained in the vicinity of the collision. A party of naval personnel boarded the *Washington*, inspected her damage and shortly thereafter informed her that the *Ruchamkin* did not need assistance and that she was at liberty to proceed. The *Washington* then got under way and arrived at her destination in Philadelphia on November 15, 1952, where the voyage was terminated and she discharged her cargo.

It was subsequently learned that all the lights referred to above were on naval vessels in a task force engaged in amphibious maneuvers.

Eleventh. The aforesaid collision and consequent damage were not caused by or contributed to by any fault, negligence or want of care on the part of the *Washington* or those in charge of her, but were caused solely by fault and negligence on the part of the United States of America, its agents, officers, servants and employees, in the following among other particulars which will be brought out upon the trial:

AS TO EACH AND ALL OF THE VESSELS COMPRISING THE TASK FORCE AND THE PERSONS IN CHARGE OF THEM

(1) In that they failed to give any or any adequate or timely warning to merchant vessels,

particularly the *Washington*, of their maneuvers, operations and presence in the area of the collision.

(2) In that they were conducting amphibious maneuvers in the vicinity of and across shipping lanes of merchant vessels traveling up and down the coast without taking any or any adequate, timely or proper precautions for their own safety and for the safety of other vessels plying such waters.

(3) In failing to station in the area picket vessels or other craft for the purpose of warning merchant ships of the presence of the maneuvering naval vessels and to keep clear thereof.

(4) In that, although knowing in ample time of the presence, course and speed of the *Washington*, they failed to give any or adequate warning to the naval vessels in the task force (particularly the U. S. S. *Ruchamkin*) of the *Washington's* presence, her course and speed.

(5) In that, although they knew or should have known that the *Ruchamkin* was obscured from the view of those in charge of the *Washington* by the other vessels in the task force, they failed to warn either the *Washington* or the *Ruchamkin* of each other's presence, course, maneuvers and speed.

(6) Notwithstanding that they were fully aware of the presence of the *Washington* and knew her course and speed and knew or should have known that the *Ruchamkin* was obscured from the *Washington's* view, they recklessly, carelessly and unnecessarily ordered and permitted the *Ruchamkin* to proceed at a very high rate of speed across the course and in front of the *Washington*, without warning either of the other's presence, although the other vessels in the task force were twice ordered to reduce speed in order to give the *Washington* more room to pass through the task force.

(7) In that, although they knew or should have known that if the *Ruchamkin* carried out the orders that were given to her, there would be danger of collision with the *Washington*, they nevertheless carelessly and recklessly reiterated such orders and failed to warn either the *Washington* or *Ruchamkin* of the other's course and speed and the danger of collision.

(8) In that, having the *Washington* on their port bow, they failed to maintain course and speed.

(9) In that they misled the *Washington* by wrongfully and carelessly altering course and speed without informing her of that fact and without sounding any whistle signals whatsoever.

(10) In that the task force vessels were not exhibiting proper lights.

(11) In that the task force vessels were exhibiting improper lights for vessels navigating on the high seas.

(12) In that the lights exhibited by the task force vessels obscured their side lights and interfered with the visibility thereof to or by other vessels.

(13) In that they conducted special large-scale and dangerous tactical maneuvers involving many naval vessels of various types and sizes crossing customary merchant lanes and negligently permitted and assisted the *Washington* to enter the formation.

(14) In failing adequately and effectively to transmit radar information of the presence, course and speed of the *Washington* to other vessels, particularly to the *Ruchamkin*.

(15) In failing properly to use their radars and to interpret properly and act upon the information which was or should have been obtained therefrom.

(16) In failing to comply with the applicable rules of navigation and the requirements

of good seamanship for such vessels on the high seas.

AS TO EACH AND ALL OF THE VESSELS COMPRISING THE SCREEN AND THE PERSONS IN CHARGE THEREOF

(1) In that, knowing the *Ruchamkin* was proceeding to a pre-arranged station at a very high rate of speed and having lost radar contact with the *Washington*, they failed to ascertain the position of the *Washington* from other vessels under their command and jurisdiction or from the other vessels in the main body or group of the task force in order to inform themselves whether or not the *Washington* and the *Ruchamkin* were standing into a position of danger.

(2) That, without knowing whether either vessel had sighted the other, and although they had both in clear view, they failed to warn the *Ruchamkin* of the presence of the *Washington* and failed to order or permit the *Ruchamkin* to take avoiding action with respect thereto.

(3) Although they had ordered other vessels in the screen to take action to give more room for the *Washington* to pass, they failed to warn or give similar orders to the *Ruchamkin*, which they knew or should have known was observed from the *Washington's* view.

(4) In ordering the *Ruchamkin* to proceed at a very high and excessive rate of speed in front of and across the course of the *Washington*.

(5) In that, having the U. S. S. *Ruchamkin* under her direction and command and knowing of the presence, course and speed of the *Washington*, particularly her relative position to the several vessels in the task force and screen, and with knowledge that the speed of the task force and screen vessels had been reduced to

avoid danger of collision with the *Washington* and to permit her to pass ahead of them, they nevertheless twice ordered the *Ruchamkin* to proceed at full speed across the course, in front of, and in dangerous proximity to the *Washington* without warning either the *Washington* or the *Ruchamkin* of the other's presence, which they knew or should have known were obscured from each other's view.

(6) Although having the *Ruchamkin* under their immediate supervision, orders and command, and knowing of the courses and speeds of both the *Washington* and the *Ruchamkin*, they did nothing to prevent a collision between those vessels.

AS TO THE U. S. S. "RUCHAMKIN" AND THOSE IN CHARGE OF HER

(1) In that she was in charge of incompetent and inattentive persons, and her lookouts were particularly inattentive.

(2) In that she was exhibiting improper lights and failed to exhibit proper lights.

(3) In that she was proceeding recklessly and carelessly at a grossly excessive speed across the course and shipping tracks of merchant vessels in the area, and particularly in the vicinity of the *Washington*.

(4) In failing to maintain an alert or proper radar watch.

(5) In failing to observe the *Washington* on radar and to plot her course and speed therefrom.

(6) In failing to maintain any proper or alert watch of the communication circuits employed by the naval vessels in the task force.

(7) In that she deliberately, recklessly and carelessly ordered her radar personnel to stand excessively long watches, which prevented them from being alert and maintaining an alert and adequate radar watch.

(8) In that, knowing the number and positions of the naval vessels in the task force, she failed to detect the presence of the *Washington* either visually or by radar.

(9) In that when she knew or should have known of the presence of the *Washington*, she recklessly and carelessly attempted to proceed in front of and across her bow at an inherently dangerous and high rate of speed.

(10) In that, knowing she was behind the task force and obscured from the view of the vessels in front or ahead thereof, she nevertheless proceeded at a dangerously high rate of speed to overtake and pass them and to proceed ahead of them without ascertaining whether there were any other vessels present in the area.

(11) In that she failed to detect the presence of a stranger in the area.

(12) In that she attempted to cross in front of the *Washington* when she knew or should have known that it was dangerous to do so.

(13) In that, being a highly maneuverable vessel, when the *Washington* came into view she failed promptly and seasonably to take any of any adequate steps to avoid collision, but on the contrary, proceeded across and in front of the *Washington* at full speed.

(14) In that, when the danger of collision was or should have been apparent, she failed to stop and reverse.

(15) In that she changed her course without giving any or any proper whistle signals, in violation of the Rules of the Road at Sea.

(16) In that she failed to warn the *Washington* of her presence in the area.

(17) In that she was engaged in an intricate and dangerous maneuver of taking position in the screen of the task force, and in so doing, failed properly and carefully to carry out that maneuver.

(18) In that, having once observed the *Washington* and assumed that the *Rachamkin* was

overtaking the *Washington*, she negligently failed to keep out of the way as required by the Rules of the Road at Sea.

Twelfth. Further answering, respondent alleges as a further defense to the libel herein that on the 17th day of April 1953 it filed a petition in the United States District Court for the Southern District of New York praying for exoneration from or limitation of liability of all claims arising out of the collision described in said libel; that pursuant thereto an injunction order was issued restraining the commencement or prosecution of suit on any and all such claims except in the said limitation proceeding; and that this answer is filed herein pursuant to order of the Court dated April 10, 1953, requiring same to be filed.

Wherefore, respondent prays that the further prosecution of the libel herein be stayed, or that the same be dismissed, with costs.

THE TEXAS COMPANY,
By FRANCIS N. CRENSHAW.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

AD 178–28. The libel of The Texas Company, as owner of the tanker *Washington*, against the United States of America, respectfully shows to the Court and alleges on information and belief:

First. At all the times mentioned herein the libelant was and is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business at 135 East 42nd Street, City, County, and State of New York.

Second. At all the times mentioned herein the libelant was and is the owner of the T–2 tanker *Washington*, which, until the collision hereinafter described was in all respects tight, staunch, strong and seaworthy and properly manned, equipped and supplied.

Third. This suit is brought under and in pursuance of the provisions of Title 46, United States Code, Sections 781 to 790, both inclusive, and Title 28, United States Code, Sections 1346 and 2671–2680, both inclusive.

Fourth. At all the times hereinafter mentioned, the respondent was and now is a corporation sovereign, and was and is the owner of the following naval vessels, all of which were at said times public vessels in the service of the United States Navy engaged in amphibious practice maneuvers off the Coast of Virginia called "Operation Seascape" under the direction and orders of duly authorized officers of the United States Navy acting in the line of duty. This task force was under the direction and control of an officer of the United States who was stationed on board the U. S. S. *Fremont*. The screening vessels, including the U. S. S. *Ruhamkin*, which were attached to and formed part of this task force and were under the direction and control of an officer of the United States Navy who was stationed on board the U. S. S. *Hollis*. The following, including the U. S. S. *Ruchamkin*, with which the libelant's tanker *Washington* collided, as hereinafter described, comprised the naval task force engaged in the aforesaid amphibious training maneuvers, to wit: The U. S. S. *Fremont*, the U. S. S. *New Kent*, the U. S. S. *Newport News*, the U. S. S. *Glynn*, the U. S. S. *Capricornus*, the U. S. S. *San Marcos*, the U. S. S. *Corry*, the U. S. S. *Lloyd*, the U. S. S. *Hollis* and the U. S. S.

O'Hare, all of which are now outside the territorial waters of the United States.

Fifth. On November 9, 1952, the tanker *Washington*, laden with a cargo of refined petroleum products, left Atreco, Texas, for Philadelphia, Pennsylvania. She proceeded without incident until the early morning of November 14, 1952. At that time she was following the customary shipping lane for merchant vessels bound up the Atlantic Coast for Philadelphia and was some fifty-five miles at sea east and south of Cape Henry, Virginia. Her second officer was on watch on the bridge. A qualified seaman was at the wheel, and the lookout, stationed forward on the bow, was attending to his duties. The *Washington* was exhibiting the regulation lights which were properly set and burning brightly. The weather was dark and clear.

As the *Washington* was proceeding on course 009° shortly before 2:00 A. M., a number of white lights became visible on the horizon, extending from the starboard beam to one or two points on the starboard bow. Those lights seemed to be on fishing vessels, and although a considerable distance away, they were kept under observation. A few minutes later two red lights appeared on the starboard bow, apparently from two vessels which were heading diagonally across the bow of the *Washington* from starboard to port and which were closer than the white lights. Although the *Washington* was then on a course that would clear the two vessels, her heading was changed slightly to starboard in order to give them ample room. When they appeared to be well clear and passing by her port bow, the *Washington* was brought back to her original heading of 009°. At about this time a number of colored side lights, evidently on

vessels theretofore showing white lights became visible. All were a safe distance away, drawing abaft the beam, and on courses to pass astern of the *Washington*. One vessel, however, emerged from behind the others broad on the *Washington*'s starboard bow, showing a red light and proceeding at a much higher rate of speed than the others, apparently attempting to cross ahead of the *Washington* from starboard to port. The rudder of the *Washington* was thereupon put hard left and she sounded two blasts of her whistle, followed almost immediately by several short blasts. The approaching vessel, which subsequently proved to be the U. S. S. *Ruchamkin*, continued at high speed, without sounding any signal, and in attempting to cross ahead of the *Washington*, brought her port side aft of amidships in contact with the starboard bow and stem of the *Washington*, inflicting serious damage to both vessels. The collision occurred shortly before 2:15 A. M., the *Washington*'s time, about fifty-five miles east and south of Cape Henry.

When the vessels came in contact with each other, the engines of the *Washington* were stopped. She remained in contact with the *Ruchamkin*, and when the latter requested her to back away, the *Washington* inquired whether the *Ruchamkin* was in need of assistance, and was informed that she was not. When again requested to back away, the *Washington* complied but remained in the vicinity of the collision. A party of naval personnel boarded the *Washington*, inspected her damage and shortly thereafter informed her that the *Ruchamkin* did not need assistance and that she was at liberty to proceed. The *Washington* then got under way and arrived at her destination in Philadelphia on November 15, 1952, where the voyage was terminated and she discharged her cargo.

It was subsequently learned that all the lights referred to above were on naval vessels in a task force engaged in amphibious maneuvers.

Sixth. The aforesaid collision and consequent damage were not caused by or contributed to by any fault, negligence or want of care on the part of the *Washington* or those in charge of her or the libelant or its agents, servants or employees, but were caused solely by fault and negligence on the part of the United States of America, its agents, officers, servants and employees, in the following among other particulars which will be brought out upon the trial:

AS TO EACH AND ALL OF THE VESSELS COMPRISING THE TASK FORCE AND THE PERSONS IN CHARGE OF THEM

(1) In that they failed to give any or any adequate or timely warning to merchant vessels, particularly the *Washington*, of their maneuvers, operations and presence in the area of the collision.

(2) In that they were conducting amphibious maneuvers in the vicinity of and across shipping lanes of merchant vessels travelling up and down the coast without taking any or any adequate, timely or proper precautions for their own safety and for the safety of other vessels plying such waters.

(3) In failing to station in the area picket vessels or other craft for the purpose of warning merchant ships of the presence of the maneuvering naval vessels and to keep clear thereof.

(4) In that, although knowing in ample time of the presence, course and speed of the *Washington*, they failed to give any or adequate warning to the naval vessels in the task force (particularly the U. S. S. *Ruchamkin*) of the *Washington's* presence, her course and speed.

(5) In that, although they knew or should have known that the *Ruchamkin* was obscured from the view of those in charge of the *Washington* by the other vessels in the task force, they failed to warn either the *Washington* or the *Ruchamkin* of each other's presence, course maneuvers and speed.

(6) Notwithstanding that they were fully aware of the presence of the *Washington* and knew her course and speed and knew or should have known that the *Ruchamkin* was obscured from the *Washington*'s view, they recklessly, carelessly and unnecessarily ordered and permitted the *Ruchamkin* to proceed at a very high rate of speed across the course and in front of the *Washington*, without warning either of the other's presence, although the other vessels in the task force were twice ordered to reduce speed in order to give the *Washington* more room to pass through the task force.

(7) In that, although they knew or should have known that if the *Ruchamkin* carried out the orders that were given to her, there would be danger of collision with the *Washington*, they nevertheless carelessly and recklessly reiterated such orders and failed to warn either the *Washington* or *Ruchamkin* of the other's course and speed and the danger of collision.

(8) In that, having the *Washington* on their port bow, they failed to maintain course and speed.

(9) In that they misled the *Washington* by wrongfully and carelessly altering course and speed without informing her of that fact and without sounding any whistle signals whatsoever.

(10) In that the task force vessels were not exhibiting proper lights.

(11) In that the task force vessels were exhibiting improper lights for vessels navigating on the high seas.

(12) In that the lights exhibited by the task force vessels obscured their side lights and interfered with the visibility thereof to or by other vessels.

(13) In that they conducted special and large-scale and dangerous tactical maneuvers involving many naval vessels of various types and sizes crossing customary merchant lanes and negligently permitted and assisted the *Washington* to enter the formation.

(14) In failing adequately and effectively to transmit radar information of the presence, course and speed of the *Washington* to other vessels, particularly to the *Ruchamkin*.

(15) In failing properly to use their radars and to interpret properly and act upon the information which was or should have been obtained therefrom.

(16) In failing to comply with the applicable rules of navigation and the requirements of good seamanship for such vessels on the high seas.

AS TO EACH AND ALL OF THE VESSELS COMPRISING THE SCREEN AND THE PERSONS IN CHARGE THEREOF

(1) In that, knowing the *Ruchamkin* was proceeding to a pre-arranged station at a very high rate of speed and having lost radar contact with the *Washington*, they failed to ascertain the position of the *Washington* from other vessels under their command and jurisdiction or from the other vessels in the main body or group of the task force in order to inform themselves whether or not the *Washington* and the *Ruchamkin* were standing into a position of danger.

(2) That, without knowing whether either vessel had sighted the other, and although they had both in clear view, they failed to warn the *Ruchamkin* of the presence of the *Washington*

and failed to order or permit the *Ruchamkin* to take avoiding action with respect thereto.

(3) Although they had ordered other vessels in the screen to take action to give more room for the *Washington* to pass, they failed to warn or give similar orders to the *Ruchamkin*, which they knew or should have known was obscured from the *Washington*'s view.

(4) In ordering the *Ruchamkin* to proceed at a very high and excessive rate of speed in front of and across the course of the *Washington*.

(5) In that, having the U. S. S. *Ruchamkin* under her direction and command and knowing of the presence, course and speed of the *Washington*, particularly her relative position to the several vessels in the task force and screen, and with knowledge that the speed of the task force and screen vessels had been reduced to avoid danger of collision with the *Washington* and to permit her to pass ahead of them, they nevertheless twice ordered the *Ruchamkin* to proceed at full speed across the course, in front of, and in dangerous proximity to the *Washington*, without warning either the *Washington* or the *Ruchamkin* of the other's presence, which they knew or should have known were obscured from each other's view.

(6) Although having the *Ruchamkin* under their immediate supervision, orders and command, and knowing of the courses and speeds of both the *Washington* and the *Ruchamkin*, they did nothing to prevent a collision between those vessels.

AS TO THE U. S. S. "RUCHAMKIN" AND THOSE IN CHARGE OF HER

(1) In that she was in charge of incompetent and inattentive persons, and her lookouts were particularly inattentive.

(2) In that she was exhibiting improper lights and failed to exhibit proper lights.

(3) In that she was proceeding recklessly and carelessly at a grossly excessive speed across the course and shipping tracks of merchant vessels in the area, and particularly in the vicinity of the *Washington*.

(4) In failing to maintain an alert or proper radar watch.

(5) In failing to observe the *Washington* on radar and to plot her course and speed therefrom.

(6) In failing to maintain any proper or alert watch of the communication circuits employed by the naval vessels in the task force.

(7) In that she deliberately, recklessly and carelessly ordered her radar personnel to stand excessively long watches, which prevented them from being alert and maintaining an alert and adequate radar watch.

(8) In that, knowing the number and positions of the naval vessels in the task force, she failed to detect the presence of the *Washington* either visually or by radar.

(9) In that when she knew or should have known of the presence of the *Washington*, she recklessly and carelessly attempted to proceed in front of and across her bow at an inherently dangerous and high rate of speed.

(10) In that, knowing she was behind the task force and obscured from the view of the vessels in front or ahead thereof, she nevertheless proceeded at a dangerously high rate of speed to overtake and pass them and to proceed ahead of them without ascertaining whether there were any other vessels present in the area.

(11) In that she failed to detect the presence of a stranger in the area.

(12) In that she attempted to cross in front of the *Washington* when she knew or should have known that it was dangerous to do so.

(13) In that, being a highly maneuverable vessel, when the *Washington* came into view she failed promptly and seasonably to take any or any adequate steps to avoid collision, but on the contrary, proceeded across and in front of the *Washington* at full speed.

(14) In that, when the danger of collision was or should have been apparent, she failed to stop and reverse.

(15) In that she changed her course without giving any or any proper whistle signals, in violation of the Rules of the Road at Sea.

(16) In that she failed to warn the *Washington* of her presence in the area.

(17) In that she was engaged in an intricate and dangerous maneuver of taking position in the screen of the task force, and in so doing, failed properly and carefully to carry out that maneuver.

(18) In that, having once observed the *Washington* and assumed that the *Ruchamkin* was overtaking the *Washington*, she negligently failed to keep out of the way as required by the Rules of the Road at Sea.

AS TO EACH OF THE OFFICERS OF THE UNITED STATES NAVY WHO WERE IN CHARGE OF THE TASK FORCE AND THE SCREENING VESSELS ATTACHED TO THE TASK FORCE

(1) In that they failed to give any or any adequate or timely warning to merchant vessels, particularly the *Washington*, of the maneuvers, operations and presence of the vessels under their command in the area of the collision.

(2) In that they were conducting amphibious maneuvers in the vicinity of and across shipping lanes of merchant vessels travelling up and down the coast without taking any or any adequate, timely or proper precautions for their own safety and for the safety of other vessels plying such waters.

(3) In failing to station in the area picket vessels or other craft for the purpose of warning merchant ships of the presence of the maneuvering naval vessels and to keep clear therof.

(4) In that, although knowing in ample time of the presence, course and speed of the *Washington*, they failed to give any or adequate warning to the naval vessels in the task force (particularly the U. S. S. *Ruchamkin*) of the *Washington*'s presence, her course and speed.

(5) In that, although they knew or should have known that the *Ruchamkin* was obscured from the view of those in charge of the *Washington* by the other vessels in the task force, they failed to warn either the *Washington* or the *Ruchamkin* of each other's presence, course, maneuvers and speed.

(6) Notwithstanding that they were fully aware of the presence of the *Washington* and knew her course and speed and knew or should have known that the *Ruchamkin* was obscured from the *Washington*'s view, they recklessly, carelessly and unnecessarily ordered and permitted the *Ruchamkin* to proceed at a very high rate of speed across the course and in front of the *Washington*, without warning either of the other's presence, although the other vessels in the task force were twice ordered to reduce speed in order to give the *Washington* more room to pass through the task force.

(7) In that, although they knew or should have known that if the *Ruchamkin* carried out the orders that were given to her, there would be danger of collision with the *Washington*, they nevertheless carelessly and recklessly reiterated such orders and failed to warn either the *Washington* or *Ruchamkin* of the other's course and speed and the danger of collision.

(8) In that, having the *Washington* on their port bow, they failed to maintain course and speed.

(9) In that they misled the *Washington* by wrongfully and carelessly altering course and speed without informing her of that fact and without sounding any whistle signals whatsoever.

(10) In that they failed to see to it that the vessels under their command exhibited proper lights.

(11) In that they directed and or permitted the vessels under their command to exhibit improper lights for vessels navigating on the high seas, and failed to take action to correct this situation.

(12) In that they permitted the vessels in the task force to exhibit other lights which obscured their side lights and interfered with the visibility thereof to or by other vessels and that they failed to take action to correct this situation.

(13) In that they conducted special large-scale and dangerous tactical maneuvers involving many naval vessels of various types and sizes crossing customary merchant lanes and negligently permitted and assisted the *Washington* to enter the formation.

(14) On failing adequately and effectively to transmit radar information of the presence, course and speed of the *Washington* to other vessels, particularly to the *Ruchamkin*.

(15) In failing to interpret properly and act upon the information which was or should have been obtained from their radar centers or from their lookouts stationed on the various vessels under their command.

(16) In failing to comply with the applicable rules of navigation and the requirements of good seamanship for such vessels on the high seas.

(17) In that, knowing the *Ruchamkin* was proceeding to a pre-arranged station at a very high rate of speed and having lost radar contact with the *Washington*, they failed to

ascertain the position of the *Washington* from other vessels under their command and jurisdiction or from the other vessels in the main body or group of the task force in order to inform themselves whether or not the *Washington* and the *Ruchamkin* were standing into a position of danger."

(18) That, without knowing whether either vessel had sighted the other, and although they had both in clear view, they failed to warn the *Ruchamkin* of the presence of the *Washington* and failed to order or permit the *Ruchamkin* to take avoiding action with respect thereto.

(19) Although they had ordered other vessels in the screen to take action to give more room for the *Washington* to pass, they failed to warn or give similar orders to the *Ruchamkin*, which they knew or should have known was obscured from the *Washington*'s view.

(20) In ordering the *Ruchamkin* to proceed at a very high and excessive rate of speed in front of and across the course of the *Washington*.

(21) In that, having the U. S. S. *Ruchamkin* under their direction and command and knowing of the presence, course and speed of the *Washington*, particularly her relative position to the several vessels in the task force and screen, and with knowledge that the speed of the task force and screen vessels had been reduced to avoid danger of collision with the *Washington* and to permit her to pass ahead of them, they nevertheless twice ordered the *Ruchamkin* to proceed at full speed across the course, in front of, and in dangerous proximity to the *Washington* without warning either the *Washington* or the *Ruchamkin* of the other's presence, which they knew or should have known were obscured from each other's view.

(22) Although having the *Ruchamkin* under their immediate supervision, orders and com-

mand, and knowing of the courses and speeds of both the *Washington* and the *Ruchamkin*, they did nothing to prevent a collision between those vessels.

(23) In that although they each were charged with the responsibility of the safe maneuvering of the vessels under their command, neither acted nor attempted to act in a seamanlike manner when the S. S. *Washington* was in close proximity in maneuvering the vessels under their command, but instead, ordered the vessels under their command to act independently, ignoring the U. S. S. *Ruchamkin* completely, and failed to assume the responsibility for which they were charged, which resulted in the S. S. *Washington* encountering eleven naval vessels all allegedly acting independently of one another, which created a situation of utter confusion.

Seventh. By reason of the premises, the libelant has sustained damages, including the cost of repairs to the *Washington*, towage, loss of use and other expenses in the sum of approximately $150,000, no part of which has been paid, although payment thereof has been duly demanded. Claims have also been made against the libelant for damages alleged to have been suffered by reason of the loss of the lives of several members of the Armed Forces stationed on board the U. S. S. *Ruchamkin*. Many other claims have been made for personal injuries and loss of property suffered by reason of the aforesaid collision. If libelant is held responsible for any such claims for loss of life, personal injury or loss of property, the libelant hereby claims reimbursement therefor from the respondent.

Eighth. Libelant elects to have this suit proceed in accordance with the principles of libels *in personam* and *in rem*.

Ninth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelant prays that process in due form of law issue against the respondent, citing it to appear and answer the libel herein, under oath within the time limited by the rules of this Honorable Court; that this cause may be heard and determined according to the principles of law and rules of practice obtaining in like causes between private parties; and that this Court will make a decree in favor of the libelant and against the respondent; and that the libelant recover of and from the respondent the amount of its damages as aforesaid, together with interest and costs, and that the libelant have such other and further relief in the premises as may be just and proper.

THACHER, PROFFITT, PRIZER
& CRAWLEY,
Proctors for libelant,
72 Wall Street, New York 5, N. Y.

In the United States District Court for the Eastern District of Virginia at Alexandria

In Admiralty No. 780

THE TEXAS COMPANY AS OWNER OF THE TANKER WASHINGTON AGAINST THE UNITED STATES OF AMERICA

Answer of the United States

The answer of cross-respondent, the United States of America, to the cross-libel of The Texas Company, originally brought as a separate libel in the Southern District of New York and transferred to this district, in a cause of collision and damage, civil and maritime, alleges on information and belief as follows:

First. Admits the allegations of Article First.

Second. Admits that The Texas Company was the owner of the T-2 tanker *Washington* but denies that said vessel was in all respects tight, staunch, strong and seaworthy and properly manned, equipped and supplied.

Third. Denies that the suit is properly brought under either the Public Vessels Act or the Federal Tort Claims Act except that it admits that the venue for suits under those Acts would be within this district.

Fourth. Admits that the United States was the owner and operator of the Naval vessels listed and that said vessels were public vessels of the United States Navy engaged in amphibious maneuvers off the Atlantic Coast; that the group was under a separate and distinct staff command denominated the O. T. C., standing for Officer in Tactical Command, which was physically located aboard the U. S. S. *Fremont* although separate and distinct from the command of that ship; and that under the O. T. C. was another staff entitled Commander Screening Unit, which was a separate and distinct staff physically located aboard the U. S. S. *Hollis* but separate and distinct from the command of that vessel; and except as so admitted denies the other allegations of Article Fourth.

Fifth. Denies the allegations of Article Fifth and restates and realleges the allegations of fact made in Article Sixth of the original libel brought by the United States against the tanker *Washington* and The Texas Company.

Sixth. Denies the allegations of Article Sixth of the libel and specifically denies that the allegations of fault charged to the task force and the persons in charge of them and the allegations of fault with respect to each and all the vessels comprising the

screen and the persons in charge thereof were faults which would be imposed by law on private vessels under the general maritime law or imposed on private persons under the general law as applied under the Federal Tort Claims Act.

Seventh. Denies the allegations of Article Seventh of the libel.

Eighth. Denies that libelant has any rights in personam or in rem against any of the vessels save the U. S. S. *Ruchamkin* and consequently denies that there is any election.

Ninth. Denies that the premises are true and that the allegations with respect to the fault of any persons save those aboard the *Ruchamkin* are within the admiralty and maritime jurisdiction.

Further answering, and for a second separate and complete defense, respondent alleges as follows:

Tenth. The alleged faults complained of by the cross-libelant on behalf of the Officer in Tactical Command of the task force and the Commander of the screening unit and of the Naval vessels other than the *Ruchamkin*, set forth novel and unprecedented causes of action for breaches of alleged duty which are not actionable under the law of the place where the injury occurred, under circumstances where one privately-owned vessel would not be liable to another privately-owned vessel for the acts or omissions complained of; and for acts or omissions of Government employees who could not be held liable individually and who are exercising purely public duties of the type not exercised by private persons; and the alleged faults are, therefore, outside of the Federal Tort Claims Act, 28 U. S. C. 2674.

Further answering, and for a third separate and complete defense, respondent alleges as follows:

—Eleventh. The alleged faults on the part of the Officer in Tactical Command, the Commander Screening Unit, and of the Commanding Officers of the Naval vessels in the formation other than the *Ruchamkin*, if proved, which cross-respondent denies, would be acts or omissions in the exercise or performance of, or the failure to exercise or perform a discretionary function or duty within the meaning of 28 U. S. C. 2680 (a) for which the Government has not consented to be sued.

Wherefore, cross-respondent respectfully prays that the cross-libel herein be dismissed, with costs, and that it be given judgment on its original libel against the said original respondent.

_____,
U. S. Attorney.

Testimony of James Arnold Upton, before the Coast Guard Board of Investigation, November 18, 1952, (Government Exhibit 25A)

A witness entered and was duly sworn.

By the RECORDER:

1. Q. Give your name and address to the reporter.—A. My name is James Arnold Upton; rating on ship, Ordinary Seaman, S. S. *Washington*.

2. Q. What is your address?—A. 319 Columbia Avenue, San Francisco, California.

3. Q. What certificates do you hold from the Coast Guard?—A. Sir?

4. Q. What certificates of Service do you hold of the Coast Guard?—A. Ordinary and Wiper's.

5. Q. Do you have your papers with you?—A. Yes, sir. [Produces papers.]

RECORDER. Z-678534. Wiper, Ordinary Seaman.

6. Q. What was your job on the *Washington* at the time of the collision with the Navy transport *Ruchamkin*?—A. I relieved the lookout at 0100, and the able-bodied seaman had reported all lights when I relieved the lookout.

7. Q. At 1 o'clock?—A. 0100. And at some time, I can't say exactly, because I didn't have a watch, maybe something before 2:00 I reported a light off the starboard bow around three points; and when 2 o'clock came I rung the ship bell. I rung four bells for 2 o'clock, and about 2 minutes later I reported the same light again, because the ship was approaching us very fast. And later, I'd say 10 minutes, I rung a bell. That is when the ship came into collision. From there I don't know what happened.

8. Q. You first saw the light shortly before 2 o'clock?—A. Yes, sir.

9. Q. You reported the light to the bridge?—A. I did. I rung one bell.

10. Q. Did you get any answer from the 2nd Mate?—A. That, I don't know. I didn't hear.

11. Q. Did you ring the bell loud enough to hear?—A. Yes, sir.

12. Q. Could you speak a little louder, please, so that everybody can hear?—A. I rung the bell very loud. And if he repeated it I didn't hear him.

13. Q. That was before 2 o'clock?—A. Yes, sir.

14. Q. Then when was the next signal that you gave to the bridge?—A. Well, after 2 o'clock—something after 2:00. I don't know, I didn't have a watch. I rung the same light another bell, and the light was approaching us very fast; and the third time I rung all the bells. I don't know exactly what did happen there, I was out. When I come to my senses I was laying on the well deck.

15. Q. What kind of lights were these that you saw on the starboard bow, Mr. Upton?—A. Starboard bow—if they had any running lights I did not see them—I saw only the mast lights.

16. Q. No colored lights?—A. Yes, if they was on I never saw them.

17. Q. This was the first sighted lights before 2 o'clock?—A. Yes, sir.

18. Q. Did you see the colored lights at all before you landed on the well deck?—A. No, sir.

19. Q. Were there two white lights or were there more? A. Only one white mast light.

20. Q. One mast light?—A. Yes, sir.

21. Q. Where were you from 12 to 1?—A. I was on standby in the messhall where I could hear the phone ringing. If the phone rung I would report to the bridge immediately.

22. Q. Who was on lookout from 12 to 1?—A. Able Bodied Seaman.

23. Q. What was his name?—A. Smith.

24. Q. Did you report your own lights at 1:30?—A. Yes, sir.

25. Q. Were they burning bright?—A. Yes, sir.

26. Q. What lights were on?—A. The port light, the starboard light and the mast light.

27. Q. Did you have a range light—after light?—A. On the bow?

28. Q. No, on the after mast?—A. Yes, sir. Well, the mast forward, it was burning.

29. Q. Were you carrying a range light, a white light aft on the after mast?—A. Yes, we was carrying one, yes, sir.

30. Q. Was it lit at 1:30?—A. I was on the bow, you can't see from the bow up through the midship aft.

31. Q. You can't see the range light from where you are at on the forecastle head?—A. I don't know about that, sir, but I do know the forward mast light, the starboard and port was all burning.

32. Q. And they were burning at 2 o'clock also?—A. Yes, sir.

33. Q. You reported that to the bridge after you struck the four bells?—A. No, sir, I checked when I first went on lookout.

34. Q. Didn't you report them thereafter?—A. I have been, but that time I didn't. If they hadn't been burning I would have hollered to the bridge.

35. Q. I see. But you rang four bells for 2 o'clock? A. Yes, sir.

36. Q. But you don't make it a practice of reporting the lights unless there is something wrong with them?—A. Yes, sir.

By the BOARD:

37. Q. Why did you ring four bells at 2 o'clock?—A. Well, they ring the ship's clock bell in the wheelhouse. I repeat them.

38. Q. You heard the bell from the wheelhouse and you answered it with four?—A. Yes, sir.

39. Q. That was how you knew it was 2 o'clock?—A. Yes, sir.

40. Q. Did you hear any bells at 1:30?—A. Yes, sir.

41. Q. Were any bells struck at 1 o'clock?—A. Yes, two bells.

42. Q. Who struck them on the forecastle head?—A. I just had relieved the lookout. I struck them myself.

By the RECORDER:

43. Q. Did you leave the forecastle head at all between 1 and 2 o'clock?—A. No, sir.

By the BOARD:

44. Q. Was this light that you saw on the starboard, was that the only light you saw between 1 and 2 o'clock?—A. No, sir; there was several other lights. There was a light on the port side I reported that, and I reported the one on the starboard.

45. Q. The one on the port that you reported, have you any recollection of the time approximately as to when that was?—A. It was something around between 1 and 1:30.

46. Q. You saw no lights from 1 to 2?—A. The lights was there had already been reported to the bridge by bells.

47. Q. I don't understand—I mean between 1 and 2 did you see any other light other than the two that you have spoken of, the one to port and the one to starboard?—A. Yes, there was a few lights, but they was away off distant.

48. Q. When you relieved Smith at 1 o'clock, did he point out any lights to you?—A. Yes, sir; he reported one on the port bow—off the port bow had been reported and some on the starboard had been reported.

49. Q. Could you see those on the starboard at 1 o'clock?—A. Yes, sir.

50. Q. What happened to the light that was on the port bow at 1 o'clock?—A. At 1 o'clock it crossed our bow around about 1:15.

51. Q. Do you know, if after seeing that light on the port bow, your ship changed course or not?—A. Yes, sir; it did change course.

52. Q. Where did it leave that light that was on the port bow after a change of course was made?—A. A little farther over toward the starboard side.

53. Q. Did it put it on the starboard side?—A. Yes, sir.

54. Q. Then what happened to it?—A. Then when this ship on the starboard was coming——

55. Q. Wait a minute, this is—about what time did this happen, this change of course; you came on at 1 o'clock and Smith said there is a light off on the port bow, is that right?—A. Yes, sir.

56. Q. Then later on the ship changed course and put it on the starboard—how soon after 1 o'clock was that change of course made?—A. I don't know exactly, I couldn't say what time.

57. Q. Was it before you struck three bells at 1:30?—A. Yes, sir.

58. Q. And that change of course put the light that was on the port bow on your starboard bow?—A. Yes, sir.

59. Q. And then, in addition there were other lights on the starboard bow, is that correct, at 1 o'clock?—A. Yes, sir, at 1, just when I relieved.

60. Q. And shortly after 1 o'clock after the change was made?—A. Yes, they—I said they had already been reported.

61. Q. What happened to those lights that were on your starboard bow after the change of course was made?—A. They were still on the starboard bow far off distant.

62. Q. Did they eventually pass astern of you or did they remain on your starboard?—A. They remained off the starboard off to a distance.

63. Q. Could you see any side lights on those lights off to starboard?—A. What do you mean, sir?

64. Q. Any red or green light?—A. No, sir; I didn't see any.

65. Q. Shortly before 2 o'clock you reported a light three points on the starboard bow?—A. Yes, sir.

66. Q. Now, between that first report you made and the next report you made at about 2 o'clock, did the bearing of that light change?—A. No, sir.

67. Q. It stayed steady at three points?—A. No, sir; it didn't stay steady.

68. Q. Well, then, it did change?—Yes, sir; it must have.

69. Q. Which way did it change?—A. It looked like it was coming around toward us.

70. Q. Could you illustrate for us [witness handed sketching paper]?—A. It came in this direction; and after I rung all the bells—four or five bells, it finally changed like this. [Sketches position of vessels.]

71. Q. And all you could see at the time was the light?—A. Yes, sir.

72. Q. You could not see the shape of the vessel, could you?—A. Not until I was right up on it.

73. Q. I know; but at the time you first reported that light, was the light all you could see?—A. That is all I could see, the light.

74. Q. What gave you the impression that it was moving fast?—A. Well, it wasn't very long from the time I reported the first time till I reported the same light the second time.

74a. Q. And between that time where had the light moved, if it had moved. I mean, when you first saw it, it was three points—which way did it move?—A. It came about three points and a quarter more; probably if it hit us, it would hit us right around midships.

75. Q. But the light when you first saw it was three points on the starboard bow?—A. Yes, sir.

76. Q. Now, where was it when you next reported it?—A. Just a little distance, about three-quarters—3¼ points.

77. Q. You mean it was more to the right or more to the left?—A. Well, it was more to the right.

78. Q. So the light remained about on the same bearing?—A. I wouldn't say that; no, not on the same bearing; no, sir.

79. Q. Well, between the time that you first reported the light and the time you made the next report, do you know if your ship changed course or not?—A. Yes; it did change.

80. Q. This is the light on the starboard we have reference to?—A. Yes, sir.

81. Q. Did the change of course as made by the *Washington* make any change in the bearing of that light?—A. The first time it changed, it changed I'd say about 10 degrees to the right, and then later it came back on the course.

82. Q. When did you first make out the loom of the vessel?—A. The loom was right at the last when I rung all the bells. It approached so fast all I could think of was ringing the bells—four or five bells.

83. Q. Did you hear any whistle signals from either vessel?—A. I heard whistles from our vessel.

84. Q. What whistles did you hear?—A. I think it was a short whistle and a long whistle.

85. Q. How many shorts?—A. That, I don't recall.

86. Q. Well, was it one short or a number of shorts together?—A. I think it was two shorts and I don't know how many long ones there was; I was excited.

87. Q. Where were you standing at the time you first saw this—reported this light to starboard?—A. Right on the bow.

88. Q. Forward of the windlass?—A. Yes, sir.

89. Q. Where were you standing when the ship hit?—A. I was at the bell.

90. Q. And where is the bell located?—A. Back——

91. Q. With respect to the windlass?—A. Back of the windlass.

92. Q. What happened to you when the ships collided?—A. From there when I came to my senses I was on the well deck.

93. Q. Did you see the ships hit?—A. No, I was all excited; if it hit I didn't know anything about it, I was out.

94. Q. Were you on the forecastle head when the ships hit?—A. I was at the ship's bell on the forecastle head.

95. Q. And which way were you looking?—A. I was ringing the bells and trying to look forward. I was all excited.

96. Q. Did you see any lights on the other ship?—A. Just the mast light.

97. Q. Did you hear any whistles sounded from the other ship?—A. No, sir.

98. Q. When the ships hit did you see anything?—A. I didn't; no.

99. Q. Do you recall hearing how the crash sounded?—A. I don't know anything about that, I was laying on the well deck when I came to my senses.

100. Q. Did you pick yourself up?—A. I was just in a dream wandering around there; I don't know what I was doing.

101. Q. How long have you been going to sea in the Merchant Service?—A. I have been going to sea since 1936, Sir.

102. Q. Offshore ships?—A. Offshore.

103. Q. Have you been going to sea in American ships all that time?—A. All the time in American ships.

104. Q. American ships?—A. Yes, sir.

105. Q. Ships on which Articles are signed?—A. Yes, sir; coastwise, intercoastal, foreign articles.

106. Q. Now, at 0100 when you relieved Smith, how many different lights did he point out to you?—A. There was three or four on the port—quite a lot of them on the starboard.

107. Q. Quite a lot of them on the starboard?—A. Yes, sir.

108. Q. Since going to sea since 1936, how many of those years have you sailed in the deck department?—A. Well, I'd say since the war in the deck department—sailed since the war in the deck department.

109. Q. And have you served as lookout on each of your voyages?—A. Yes, sir.

110. Q. How many vessels would you estimate were represented by these lights that Smith pointed out to you?—A. That, I couldn't tell, sir.

111. Q. Well, you say you saw a number of lights on the port bow—do you think that was one vessel, two vessels, how many?—A. I would say maybe three vessels there.

112. Q. You think that as a result of the lights that were pointed out by Smith there were three vessels on the port bow?—A. Yes, sir.

113. Q. As a result of the lights that he pointed out to you on the starboard bow how many vessels do you think there were out there?—A. Off distance I couldn't tell, it seemed to me they were lined up like fishing boats.

114. Q. Have you ever served in the Navy?—A. Yes, sir.

115. Q. When was that, before '36?—A. No; after—during the war.

116. Q. What types of ships did you sail in in the Navy?—A. Destroyers.

117. Q. In the deck department?—A. No, sir; below.

118. Q. Engine room?—A. Yes, sir.

119. How many years were you in the Navy?—A. 1940 to 1946.

120. Q. About how far—these lights you saw, to starboard, that Smith pointed out to you, were all white lights?—A. White lights; yes, sir.

121. Q. How far off would you guess they were?—A. That, I couldn't say, sir—quite a distance.

122. Q. Is there a phone system between the lookout station on the forecastle head and the wheelhouse?—A. Yes; they got one down below under in the forecastle head.

123. Q. It's not on the forecastle head?—A. No, sir; just a ship bell.

124. Q. Is that the only means of communication other than yelling that you have between the forecastle head and the wheelhouse, is the bell?—A. Yes, sir.

125. Q. Did you do any yelling to the wheelhouse after you took over lookout watch at 1 o'clock?—A. No, sir.

126. Q. Did anyone from the wheelhouse yell at you?—A. No, sir.

127. Q. Did you hear any shouting or yelling from the other ship before it was hit?—A. No, sir; I didn't.

128. Q. Did they flash any lights, such as searchlights or blinkers on the ship?—A. You mean from the ship we hit?

129. Q. Before the collision did the ship which the *Washington* eventually hit shine any searchlights or blinker lights?—A. No, sir.

130 Q. Now, having in mind at 1 o'clock those lights that were pointed out to you by Smith, did you

yourself pick up any other different lights between that time and 2 o'clock?—A. Yes, sir.

131. Q. What lights did you pick up?—A. I picked up one on the port bow—off the port bow.

132. Q. And you said you picked up one on the starboard?—A. Yes, sir.

133. Q. Just before 2 o'clock?—A. Yes, sir.

134. Q. When did you pick up this new one on the port side?—A. I picked that up before I seen the one on the starboard.

135. Q. Could you make out any side lights, red or green side lights on any of these lights that you yourself picked up?—A. No, sir.

136. Q. Were any of these—you know the difference between the masthead and a range light?—A. Yes, sir.

137. Q. This one you picked up on the port side, was it showing more than one light?—A. Only one.

138. Q. Only one?—A. Only one.

139. Q. You stated that you heard and answered the bells struck in the wheelhouse at 1 o'clock and 2 o'clock?—A. When they ring the bell—the clock bell—I repeat it.

140. Q. Do they strike a bell with the ship's bell?—A. Yes, sir.

141. Q. The clock bell, can you hear the clock bell?—A. No, sir.

142. Q. Had you heard a bell other than the clock bell at 1:30 and 2?—A. You cannot hear the clock bell, but when it strikes in the wheelhouse they ring the ship's bell there and I repeat them on the forecastle head.

143. Q. That is what I'm trying to get clear—you did hear the ship's bell at 1:30 and 2 and you answered?—A. Yes, sir.

144. Q. But you testified that you did not hear the ship's bell answer the bell you use for reporting lights; is that right?—A. I didn't hear it; no, sir.

145. Q. During the period from midnight to 1 o'clock you were on standby; is that correct?—A. Yes, sir.

146. Q. And you spent it back in the crew's quarters?—A. In the crew's messhall right by where I could pick up the phone.

147. Q. What did you do back there?—A. Standby.

148. Q. Did you have anything to eat or drink?—A. No, sir; nothing.

149. Q. No coffee?—A. Oh, we—I had coffee; yes, sir.

150. Q. How many cups of coffee did you have?—A. I very seldom ever drink coffee.

151. Q. I know, you said you had some.—A. I had a couple of cups—usually drink tea.

152. Q. You had a couple of cups this morning?—A. Yes, sir.

153. Q. Did you drink it black or with sugar?—A. Black.

154. Q. What time did you turn in the night of the 13th?—A. The 13th?

155. Q. The occasion of the collision was at 2 o'clock or so on the morning of the 14th.—A. I don't know, sir.

156. Q. Do you know how many hours sleep you had, if any, before you went on watch?—A. Before I went on watch? I went to bed about 5:30, I got up at 11:30.

157. Q. Did you sleep?—A. Yes, sir.

158. Q. When you were standing by in the messhall did you have any messages on the phone from the wheelhouse?—A. No, sir.

159. Q. Did you call the wheelhouse?—A. No, sir.

160. Q. Did you have any calls from any part of the ship by phone?—A. No, sir.

161. Q. Do I understand you to say, that all the reports regarding the lights which you made were all reported, were shouted back to the bridge?—A. Out there?

162. Q. Yes.—A. I didn't shout back.

163. Q. How did you make your reports to the bridge?—A. By bell.

164. Q. Did you report the lights to the bridge?—A. By bell; yes, sir.

165. Q. You mean the lights which you saw from your ship, how did you report those to the bridge?—A. By the bell on the forecastle head.

166. Q. How did you get on the well deck?—A. I don't know that sir.

167. Q. Do you know how long you were on the well deck?—A. No, sir.

168. Q. Are you sure that the change in bearing of these lights which you observed was due to a change in course of your ship?—A. Say that again, sir?

169. Q. You have stated that some lights you sighted were on the port bow?—A. Yes, sir.

170. Q. And that they appeared to cross the bow to the starboard?—A. One ship.

171. Q. One ship?—A. Crossed.

172. Q. You have also stated that your own ship changed course?—A. Yes, sir.

173. Q. How do you know your own ship changed course?—A. Well, the ship that crossed our bow crossed it—I could see our ship moving over to clear the ship that crossed the bow.

174. Q. What is your best estimate as to the distance off of this ship which crossed your bow—how far

was that away from your ship when it crossed your bow?—A. Well, the one that crossed from the port side to the starboard side, I'd say it was 8 mile off.

175. Q. Do you know what kind of a ship it was?—A. No, sir.

176. Q. Were you sick at all on the day of the 13th?—A. No, sir.

177. Q. Had you been hospitalized at all?—A. No, sir.

178. Q. When you went on watch were you feeling satisfactory?—A. Yes, sir.

179. Q. Feeling well?—A. Yes, sir.

180. Q. Feeling as good as you usually do when you go on watch?—A. Yes, sir.

181. Q. You have stated that you were lying on the well deck when you came to?—A. Yes, sir.

182. Q. Do you have any idea what time that was?—A. No, sir; after I ring the four or five bells, from there on I don't know what happened.

183. Q. Did you see this—any vessel just prior to the collision with the—involving the *Washington*?—A. Say that again?

184. Q. Did you see any other vessels just prior to the *Washington*'s collision?—A. Before or after, what do you mean?

185. Q. Just immediately before?—A. Well, when I was ringing the four or five bells call I could see the Navy ships there, but all I could see of it—and I was all excited—

186. Q. From which direction were they approaching?—A. They was approaching us on our starboard bow.

187. Q. Were they running dark?—A. Only the lights on the mast that's all.

188. Q. You saw the lights on the mast?—A. I did.

189. Q. And in what direction were they approach-

ing? Were they approaching you from dead ahead or from off the bow or abeam?—A. Across our bow.

190. Q. Were they crossing from starboard to port?—A. Yes, sir.

191. Q. Do you have any idea of what speed, were they going very fast, were they going slow?—A. They was going very fast.

192. Q. Do you recall the actual collision?—A. You mean when it hit?

193. Q. Yes.—A. No. I was all excited.

194. Q. What made you excited?—A. Sir?

195. Q. What made you excited?—A. You see a ship coming in towards you.

196. Q. Why should that have excited you; other ships have approached you, I suppose; why should that particular ship have excited you?—A. I don't know; but I don't like being on that forecastle head when anything like that happens; that Navy ship approaching us that way.

197. Q. Was it close enough so that it scared you?—A. Yes, sir.

198. Q. How long had it been in sight before you began to get scared?—A. I didn't get scared until I went to ring the bells.

199. Q. Well, about how long had you seen the vessel, then, before you began ringing bells?—A. I'd say four, five minutes.

200. Q. And had you signalled to the officer of the bridge one bell indicating that there was something on your starboard bow?—A. Yes, sir.

201. Q. And had he indicated back to you that he had heard your signal?—A. That I didn't hear, sir.

202. Q. Does he have any way of informing you that he has heard your signal?—A. If he was to call, the phone is down in the forecastle head down by

that—I would have to run from the bow all the way down the ladder to the phone and back up.

203. Q. Do you know if anyone on the crew of the *Washington* involved in this—do you know if anyone who was in the crew of the *Washington,* who was in this collision suffered any casualties?—A. Myself.

204. Q. Yourself? What happened to you? What injuries did you suffer?—A. My back's bothering me.

205. Q. Your back is bothering you?—A. Yes, sir.

206. Q. Where?—A. (Witness stands.) Right around here, sir. [Indicating lower part of back.]

207. Q. Have you received any treatment for that injury since you were on the well deck?—A. Yes; I went to a doctor Saturday night.

208. Q. Where?—A. Here in Philadelphia.

209. Q. Did you get any treatment at all aboard the ship prior to the arrival in Philadelphia?—A. I got treated for some skin—little cuts on my hip here—and I got some ointment to rub on my back to keep it from getting sore.

210. Q. And who treated you from the ship?—A. The captain; also the chief mate.

211. Q. Did you tell them how you got this injury?—A. Yes, sir.

212. Q. What did you tell them?—A. Well, at the time I was wandering around there; I couldn't feel nothing for maybe a couple of hours later; it was bothering; it hurt; and I told them I was hurt.

213. Q. Well, from the time your picked yourself up off the well deck till you reported to the master of the ship that you were injured, what did you do?—A. I reported the accident something around two hours later.

214. Q. You reported the accident about two hours lafer?—A. Two hours; about my back being hurting.

215. Q. From the time you found yourself on the well deck until you turned yourself in to the master reporting that you were injured, what did you do, stay on the well deck; did you go back and have coffee; did you go up on the bridge; did you take the wheel?—A. No, sir; I didn't steer.

216. Q. How did you spend the time from the time you were on the well deck until the time you reported to the master?—A. Well, I was wandering around there, and when I came to my senses I went up to the forecastle head and stayed there until my relief came up and relieved me.

217. Q. And who relieved you?—A. Mr. Smith.

218. Q. And do you know what time it was that he relieved you?—A. Not exactly; no.

219. Q. Do you know whether he relieved you at the time—at the normal time for relieving the watch?—A. I think so.

220. Q. Were you required to do any further work after you had reported to the master that you were injured?—A. No, sir; I didn't do no more work. He told me to lay around and take it easy.

221. Q. And you did that?—A. Yes, sir.

222. Q. Do you know of anyone else besides yourself who was injured?—A. No, sir.

223. Q. Did you at any time prior to the accident, between the time you were on—during the time you were on watch were you able to identify any of these various vessels which were carrying the lights—that is as to size, as to shape?—A. No, sir; I couldn't.

224. Q. How do you know this was a destroyer which was bearing down—when did you learn that this vessel which was bearing down on the bow of the *Washington*, and eventually was in collision with the *Washington*—how did you know that was a naval

vessel?—A. Naval vessel? I didn't know until after I come to my senses.

225. Q. During the time that you were on watch on the forecastle as lookout, and prior to the collision, were the conditions as regarding the anchor engine and the other equipment up there normal—that is, were they stowed normal as far as you could see?—A. I don't know, sir.

226. Q. Did you hear any noise such as the bumping of an anchor chain or anchor against the bow of the ship?—A. You mean before?

227. Q. Yes.—A. Before we had any accident at all—no, sir.

228. Q. Then as far as you know both anchors were properly housed?—A. Yes, sir; as far as I know.

229. Q. What sort of visibility did you have that night?—A. Sir?

230. Q. What sort of visibility did you have while your were on watch? Was it unlimited visibility; could you see five, 10 miles, 20 miles, or was it thick fog?—A. I could see at least five, six mile away.

231. Q. Was there a bright moon?—A. That I don't remember.

232. Q. What was the weather like—windy?—A. It was a little windy; yes.

233. Q. What was the sea like?—A. Calm sea.

234. Q. Do you feel that the reason you went up on the well deck was because of the collision and not because of having been thrown there by some other force than the collision?—A. Yes, sir.

235. Q. Did anyone come to your assistance when you fell in the well deck?—A. I don't know, sir.

236. Q. When you went back up on the forecastle head after the collision, where was the Navy ship?—A. It had done pulled away. The Navy ship had pulled

away. I don't know what happened—who pulled away first—I don't know.

237. Q. Could you see the Navy ship at all?—A. Yes; you could see it off the distance.

238. Q. How far off could you see the ship itself?—A. Could see part of it.

239. Q. Where was it? With respect to your position on the forecastle?—A. I would say it's about one point off.

240. Q. On which side?—A. Port.

241. Q. Port side? Well, when you went back up on the forecastle head after the collision did you observe any change in the condition of material or equipment on the forecastle head?—A. I was so rum-dum, I don't know. I was addled. I didn't know whether I was coming or going.

242. Q. When did your mind clear up?—A. I know what I was really doing? It was about two or three o'clock that afternoon.

243. Q. Was the ladder to the forecastle head or the ladder which you used going up and down the forecastle head bent or twisted in any fashion?—A. That, I don't know.

By the RECORDER:

244. Q. When you reported the light on the port side to the second mate did he answer by a bell stroke?—A. No, sir.

245. Q. Well, is it customary when you report a light, for the second mate to answer you or any of the mates on watch to answer you in any particular fashion?—A. No, sir.

246. Q. He didn't answer with a bell stroke?—A. He can't see the light, he gets his binoculars.

247. Q. But it's not customary for him to answer with a bell stroke or shout to you?—A. No, sir.

By Mr. Brush:

248. Q. Mr. Upton, what was the name of the doctor that you saw Saturday night?—A. Dr. (refers to paper in wallet) Charles H. Barnett, 1022 Spruce Street, Philadelphia.

249. Q. Last evening you were examined at the Public Health Station across the street were you not?—A. Yes, sir.

250. Q. And then you were taken by Captain Mackey and me to St. Agnes Hospital?—A. Yes, sir.

251. Q. Now, sometime thereafter, after we left, you received a visitor, did you not?—A. Yes, sir; I did.

252. Q. Do you know who he was?—A. No, sir; I don't.

253. Q. Could you describe him for us?—A. He was something around five-and-a-half foot tall, fair complexion, had a Navy uniform on.

254. Q. And, did he have a conversation with you?—A. Well, he asked me was I on the *Washington?* I said I was. He said, "Well, how did this accident happen"? I said, "Well, be in court tomorrow and you'll find out.

255. Q. What time of the evening was this? A. It was something between, I'd say between 8:30 and a little after 9.

256. Q. Where were you at the time?—A. In the hospital.

257. Q. What sort of a uniform did he have on?—A. As far as I know he had a blue—white shirt.

258. Q. Was it an officer's uniform or an ordinary sailor's uniform?—A. He had two stripes here, I did notice that. [Indicating right arm.]

259. Q. Did he give his name?—A. No, sir. He said he had checked the ship and I wasn't on board.

260. Q. And you were not on board?—A. Yes, sir.

261. Q. Did he say he was from the Navy?—A. He said Navy Department, that is all he said.

262. Q. Navy Department, but he didn't give you his name?—A. Yes, and he asked about the circumstances of the collision.

Mr. BRUSH. That is all.

BOARD. Mr. Lanning do you have any questions?

Mr. LANNING. No questions.

BOARD. Mr. Holden, do you have any?

Mr. HOLDEN. No.

BOARD. We'll take about a five-minute break here.

The board recessed at 11:15 for five minutes.

This reporter relieved by Irving Levine, SN (CR) USCG.

Irving Levine SN (CR)USCG entered as reporter relieving Thomas A. Keeley, YNC (CR) after a five minute recess.

By Mr. BRUSH:

263. Mr. Upton, were you served with a subpoena by the Coast Guard?—A. I was.

264. Q. When?—A. Saturday.

265. Q. And have you been under subpoena since that time?—A. Yes, sir.

266. Q. To appear here and testify?—A. Yes.

Mr. BRUSH. That's all.

By Cdr SCHLEGEL:

267. Q. Mr. Upton, that man that you described as a Navy Officer with two stripes that visited—where did he visit you and when?—A. In Saint Agnes Hospital.

268. Q. And when?—A. Last night.

269. Q. Last night?—A. Yes.

270. Q. Do you know what kind of an insignia he was wearing on his sleeve? Was it a star or like a shield like those Gentlemen are wearing?—A. It wasn't a shield.

271. Q. Do you know what it was?—A. No, sir; I don't.

272. Q. Can you describe it at all?—A. I didn't see a star, just the uniform with them two stripes on it.

273. Q. How do you know you didn't see a shield? If you didn't see a shield I'd like to know what it is, its description?—A. I didn't see anything on his arms whatsoever. No shield or no star. I did notice the two stripes.

274. Q. You know there were two stripes but whether he was wearing a shield or star or what type of insignia he had you don't know?—A. I don't know sir.

275. Q. Do you know what kind of insignia he was wearing on a cap, or did you see a cap?—A. He had it in his hands.

276. Q. Can you describe the insignia he had on it, was it a shield that was on it?—A. I didn't see the shield or anything on his hat.

Cdr. SCHLEGEL. Let me make a statement for the record at this time on behalf of the Navy Department. I have no personal knowledge of who this individual was who called upon Mr. Upton. The Secretary of the Navy has directed that witnesses shall not be subpoened for the Navy Court of Inquiry. The Secretary of the Navy has indicated in this particular case his well established policy of conforming with the regular rules of Civilian Admiralty practice of not attempting to contact the witnesses of the other side unless he has the permission of counsel for parties concerned. I have no explanation as to who contacted Mr. Upton. If he was anybody in the Navy I pre-

sume that he was someone that has started a separate investigation from some involved command without receiving proper clearance from the people who were actually doing the work. Since you have given no statement I think that there is no harm done and I shall take official action to see that anybody who may have been involved in the Navy in this matter will be properly advised so that the incident is not repeated, assuming that there was a Navy man in it which apparently I can't determine at this time.

Mr. BRUSH. May I simply remark that I do not know who this individual was. I simply thought that since Mr. Upton was under subpoena to appear here and testify since Saturday, that the Board should be informed of that. I do know, however, with respect to your statement as to the general policy of the Navy Department, that the Legal Officer for the Third Naval District, accompanied by two other officers appeared aboard the *Washington* on Saturday, immediately upon the arrival of the vessel and asked to interview the officers and crew of the *Washington*. I thought that was quite irregular and was surprised. I informed them that they would not be permitted to interview so that I have no general knowledge of the policy of the Navy. I should hope it would be the policy of the Navy not to permit such action.

Cdr. SCHLEGEL. Was this the Legal Officer of the Third Naval District you say?

Mr. BRUSH. He described himself as the Legal Officer of the Third Naval District. I don't remember his name.

Lt. WILKIN. That is the Legal Officer of the Navy yard, but he is attached to the Fourth Naval District here.

Mr. BRUSH. Yes, the Fourth Naval District.

Cdr. SCHLEGEL. I'll take appropriate action to see that everybody in the Fourth Naval

District is duly instructed so that the incident won't be repeated, and I can only reassert the policy and the good intentions of the Navy Department concerning the problem. It is simply one of indoctrination I gather and certainly the Fourth Naval District people will be indoctrinated on that score so that the incident isn't repeated during their regime.

By Cdr. SCHLEGEL:

277. Q. Mr. Upton, will you tell me the direction the wind was blowing as you were standing out on the forecastle head of the *Washington*?—A. I think it was blowing straight ahead.

278. Q. How was the temperature that night?—A. That I don't know.

279. Q. Was it warm or was it cool?—A. It was pretty cool.

280. Q. Now, as you stood at the bell, how far were you from the foremost part of the ship; the bow?—A. I'd say 15, 16 feet.

281. Q. And were you standing on the deck as you stood by the bell?—A. What do you mean, sir?

282. Q. You didn't have a box there to raise you up from the deck; your feet were on the deck?—A. Yes, sir.

283. Q. As you stood at the bell looking forward over the bow.—A. I was up forward looking toward——

284. Q. No; I'm talking about at the time you were standing at the bell. At that time can you tell me how far ahead you would have to look over the ship as she was loaded at the time in order to see the water. Do you see what I mean. You're standing here. You have the bow here, and somewheres there is a blank area; you're looking down over the bow and there is some water. You can't see immediately under the bow I presume. Can you tell me how

far out over the water you have to look before you can see?—A. Quite a long ways.

285. Quite a long ways?—A. Yes, sir.

286. Q. This ship you say that you saw at about 2 a. m. about 3 points off the starboard bow, you gave one bell. This was the same ship—are you certain that you again reported a few minutes later?—A. I reported the same light twice.

287. Q. That you reported the first about 2 a. m.?—A. It was something a few minutes before.

288. Q. A little before 2 you reported it the first time and that is when she was off your starboard bow?—A. Yes, sir.

289. Q. And then a few minutes later you reported the second light, or you reported the same light a second time?—A. Yes, sir.

290. Q. Do you remember about how many minutes there was in that interval?—A. I'd say around 10 minutes.

291. Q. And then from the time that you reported it the second time about how long was it until you began to ring the bells as fast as you could as she was coming in on you?—A. Well, it was when I could just see the bow of their ship.

292. Q. And how far off was that bow about that time your best guess?—A. That I don't know myself, just how far.

293. Q. Do you think it was as much as a mile or a half mile?—A. No; it was no mile.

294. Q. Was it a half mile; do you think that far?—A. No, sir.

295. Q. Could you actually see the bow of the ship; the outline of it, the silhouette?—A. When I was standing looking I could see their bow and at the time—and the time I rung the bells I don't know anything else from then on.

296. Q. During this time now from a little bit before 2 o'clock in the morning until you blacked out you had been watching this one light coming closer to you, is that right?—A. I was watching that one light and observing all that I could see in sight.

297. Q. But you had that one particular light under—You knew where he was at all times?—A. How's that again?

298. Q. You knew what this one light was doing; you were keeping generally familiar with the whole area and with this one light?—A. I was watching the lights I had reported.

299. Q. On any of these other lights that were around did you have any occasion to report any of them a second time?—A. No, sir. The reason I reported that one on the starboard it was approaching us very fast.

300. Q. He seemed to be closer to you all the time?—A. Yes, sir.

301. Q. And after you reported it the second time about how long was it until the time of collision or until he got so close that you blacked out?—A. How's that?

302. Q. You first reported the light about a few minutes before 2 and then about 10 minutes later you said you reported the same light a second time?—A. Yes, sir.

303. Q. And then a little bit later on you blacked out when he came so close and you had the collision. Now, how long was it from the time you reported this second light or from the time you reported this light the second time until you blacked out, just a guess?—A. You mean after I rung the bell?

304. Q. That's right, you rang the bell a second time, did you still see this light over here?—A. Yes.

305. Q. And from that time how long was it until you lost consciousness?—A. I don't know, sir.

306. Q. Was it a half hour?—A. No, sir.

307. Q. Was it 10 minutes—A. I don't think quite 10 minutes.

308. Q. Was it more than 5 minutes?—A. I'd say around 7, maybe 8 minutes.

309. Q. 7 or 8 minutes from the time you rang the bell the second time until you blacked out?—A. Yes, sir.

310. Q. Now, how long were you at the bell this third time ringing the bell very violently to try to tell him that he was almost on us?—A. I rang the bell about 4 or 5 times and I went out. I don't know what happened.

311. Q. It was just a matter of seconds that you were ringing the bell then before you blacked out?—A. Yes, sir.

312. Q. During all this time from a few minutes before 2 in the morning when you reported the light the first time until you blacked out, had you tried to contact the bridge or anybody else aboard the ship by voice or any other means besides ringing the bell?—A. No, sir.

313. Q. Had there been anybody else on the forecastle head with you at any time from 1:30 on that morning until you blacked out?—A. No, sir.

314. Q. Did you have a pair of binoculars while you were on the forecastle head standing watch?—A. No, sir.

315. Q. Is it customary for you to stand watch aboard the vessel without binoculars and simply using your naked eye?—A. It's only that, I have ever used.

316. Q. Do you wear glasses?—A. No, sir.

317. Q. Can you read the top three cards back there on that board? (Indicating a placard board in the

rear of the hearing room.)—A. (Reading) "Claim, Record, Certified" (The cards read, Claims; Recording; Certification.)

318. Q. That is good enough; that is fine. Now, as this one light was coming closer and closer to you; the one that you reported first a few minutes before two a. m. and then about ten minutes later, and then about six or seven minutes later on by ringing the bells four or five times when he was right on you, what had these other ships been doing that you also noticed in the area?—A. The other ships was off at a distance.

319. Q. How far off were they?—A. Well, that is something I can't guess, these ocean miles.

320. Q. Had you come closer and closer to them during the time that this other ship was coming in on you; can you tell that?—A. After that ship was coming in close I kept my eye on that one ship at the present time, but I was viewing the other ships in the stern of the ship which was on the starboard bow. [Witness draws sketch.] Our ship was here, a ship here, and these few lights also starboard.

RECORDER. He says his ship was so, this ship was coming in on him and just a few lights on the—I'll call it the stern of that other Navy ship, whatever it was at the present time; a few lights here, but these weren't coming any closer.

By Commander SCHLEGEL:

321. Q. In other words, you had some lights astern of the Navy ship?—A. Yes, sir; just a few.

Commander SCHLEGEL. Will it be all right if I draw this outline for him?

The BOARD. Yes.

(Commander Schlegel places ship models on sketching paper and witness places them in their respective positions. Commander Schlegel then draws around models.)

By Commander SCHLEGEL:

322. Q. This is your ship labeled the *Washington*, and this the Navy ship labeled "Navy." Now, about how far would you say it was, at the time you made this observation, between the closest points of the two ships, the *Washington* and the Navy?—A. You mean before anything happened?

323. Q. Yes. At the time that you saw the ships like this, how far do you think they were apart?—A. You mean——

324. Q. When you saw the lights over on the stern there—what I want you to do—suppose we approach it this way. You said when the ships were in this position that you saw some other lights over off the stern of the Navy ship. Now, can you take this pencil and show me approximately where you saw those lights off the stern of the Navy ship?—A. (Witness indicates.)

325. Q. What kind of lights did you see over there?—A. You could only see white lights.

326. Q. How many white lights did you see?—A. Well, I don't recollect just how many.

327. Q. Did you see more than one?—A. Yes, sir.

328. Q. Did you see two?—A. More than two.

329. Q. Did you see three?—A. I saw around four or five lights.

330. Q. Four or five lights. Will you draw here just a little round circle showing where you saw each one of those lights as best you can remember?—A. To my best of knowledge, I'd say—[Witness indicates as requested]. It looked like fishing boats to me.

331. Q. Now, at the time everything looked like this to you, about how far would you estimate it was between the *Washington* and the Navy ship?—A. You mean before the accident happened?

332. Q. At the time you saw the Navy ship here you were standing—— A. Before I could see it?

333. Q. That's right: as you were standing here and as you were standing up in the forecastle head it looked to you like the Navy ship was over here and you could see 1, 2, 3, 4, 5 lights off her stern; and now, at that time how much distance do you think there was between you and the Navy ship?—A. I'd say there was about 50, 60 feet.

334. Q. 50 or 60 feet at that time?—A. Yes, sir.

335. Q. And how much distance do you think there was between you and these lights?—A. Well, I'd say a mile.

336. Q. A mile?—A. Yes.

337. Q. And about how long was it before you blacked out that you made this observation?—A. From here to there?

338. Q. Yes.—A. I run back to the bell.

339. Q. That was just a matter of seconds?—A. Yes.

340. Q. Is that the way it looked?—A. Yes.

341. Q. And at this time was the last clear view you have of the Navy ship coming in on you?—A. Yes, sir.

Commander SCHLEGEL. I'd like to have this introduced into evidence.

342. Q. Yill you sign this please?—A. Yes [witness complies].

Sketch of positions of vessels by James Arnold Upton was submitted to the board and to the parties in interest and by the recorder offered in evidence.

There being no objection, it was so received, and marked Exhibit No. 10.

By Commander SCHLEGEL:

343. Q. Mr. Upton, at the time you observed the Navy ship and these lights from the *Washington's*

bow when the Navy ship was 50 or 60 feet away from you as you have indicated on this sketch, can you tell—on the exhibit, can you tell me if you saw any lights dead ahead or off to port?—A. You mean——

344. Q. When the Navy ship was 50 or 60 feet away from you as you indicated here on this exhibit, do you remember whether you saw any lights or any ships dead ahead or over to port?—A. That I don't know sir. I was all excited.

345. Q. Do you recall when before this time you last remembered seeing any ships dead ahead or off to port if you do remember seeing any?—A. Before anything happened I seen that cross the bow.

346. Q. You say you saw that cross the bow, what do you mean?—A. The light cross.

347. Q. You saw one light cross your bow and about how long was it before this collision happened?—A. I don't know sir.

348. Q. Was it a long time, was it as much as a half hour?—A. That was the one I explained to them. It was around 1:15, I'd say. I don't know, just guessing about what time.

349. Q. And you don't recall any other lights passing you or over on your port side going from starboard to port, passing you dead ahead or over on your port side after about one o'clock?—A. I don't know sir.

350. Q. I think you said that about 1:15 you had this vessel that passed across your bow coming from your starboard crossing your bow toward port?—A. Coming from port to starboard.

351. Q. Port to starboard about 1:15. Did you at any time from the time that vessel passed ahead of you make any report of vessels dead ahead or a vessel dead ahead?—A. When I reported that light I rung two bells for the port bow.

352. Q. After that did you ever make any report of a vessel dead ahead or vessels dead ahead before the collision?—A. No.

353. Q. How would you make a report of a vessel dead ahead?—A. Three bells.

354. Q. And you never gave a three bell signal at any time during the hour before the collision?—A. No, sir.

355. Q. How long have you been aboard the *Washington*?—A. November the 8th, 1952.

356. Q. You joined her in the Gulf on this present voyage?—A. Yes, sir.

357. Q. Did you receive any instructions at all after you boarded the *Washington* as to the manner in which you were to conduct your lookout duties on the forecastle from anybody aboard the *Washington*?—A. No. When I first come aboard the mate on watch always asked the ordinarys, the a. b.'s and quartermasters names of the watches.

358. Q. And your job as you understood it if I understand you correctly, was to be up on that forecastle and ring one, two, or three bells indicating whatever you might see ahead of you?—A. Yes, sir.

359. Q. Did you have any orders or instructions about making sure that anybody aboard that ship heard those bells?—A. I was to ring it loud enough so the mate on watch can hear it.

360. Q. And did you have any way of knowing whether or not he did hear the bells when you rang them?—A. No, sir.

361. Q. As you were standing on the forecastle by the bell ringing it during these last few seconds or whatever it may have been before the collision, do you recall whether your vessel made any noticeable engine changes?—A. No, sir; I didn't.

362. Q. Do you know what speed or how her engines were going before the collision?—A. No.

363. Q. All you know was that she was going forward?—A. Yes, sir.

364. Q. When you are up there if the engines are placed in reverse; from ahead to full astern, could you tell by vibration or in any other manner whether or not there was an engine change being made?—A. That I don't know, sir. At this time I was all excited.

365. Q. But usually, assuming that you are not excited, just as you stand up there normally, when they make an engine change can you usually feel a vibration or something that tips you off that there is a change of engines being made?—A. Yes, sir; I could.

366. Q. And you don't recall anything of that nature happening that night before the collision or before you blacked out?—A. I don't recall, sir.

367. Q. How fast do you think the ship that you were in collision with was actually travelling as she was coming in?—A. I don't know.

368. Q. Was it fast or slow?—A. Coming pretty fast is all I can say.

369. Q. And in view of the fact that she was coming in pretty fast and appeared to be coming closer to you, was there anything that you could have done between ringing of the second bell, telling them that you still had the light, until you rang the bell again rapidly 4 or 5 times just before you blacked out?—A. Not that I know of, sir. Just the bells, that is all.

370. Q. Did you try shouting to the bridge?—A. No, sir.

371. Q. If you had shouted do you think you could have been heard?—A. That I don't know.

372. Q. Are you able normally to be heard if you shout from where you were standing by those people on the bridge?—A. I don't know.

373. Q. How far is it from where you were standing on the forecastle head, as you stood this watch, to the bridge where the mate would be, in that vicinity?—A. That I don't know just how far it is.

374. Q. Did the thought of shouting ever occur to you as you watched the ship closing with you?—A. Yes, sir.

375. Q. Why didn't you shout?—A. After I rung the second bell I thought about it but I couldn't get it out.

The Board. It's 1145 now, we'll adjourn now and reconvene at a quarter of one.

The Board adjourned at 1145, 18 November 1952.

The Board reconvened at 1300.

All members and parties in interest who were present when the Board recessed for lunch are present.

The witness was warned that his oath is still binding.

By Cdr Schlegel:

376. Q. Mr. Upton, you said earlier that you heard whistle signals from the *Washington* before you blacked out. Can you tell me about how long it was between hearing the first blast made of these whistle signals and the time that you blacked out?—A. What do you mean, sir?

377. Q. How long was it between the time you first heard them making a whistle signal on the *Washington* and the time that you blacked out?—A. I'd say it was around after 1; just about a minute or so after I rung the second bell for the same light.

378. Q. And how long was it from the time that you heard the last whistle signal made by the *Washington* until you blacked out?—A. I don't know.

379. Q. Was it very long; was it 5 minutes or 5 seconds?—A. It wasn't that long.

380. Was it as much as 2 minutes, 3 minutes, 1 minute, whatever your best estimate is?—A. Around 5 or 6 minutes.

381. How much?—A. Around 5 or 6 minutes.

382. Q. Around 5 or 6 minutes?—A. Yes, sir.

383. Q. Do I understand you correctly to be saying that you made your second signal with the bell——A. Yes, sir.

384. Q. And then about a minute or maybe two minutes after that your ship made some whistle signals—A. Yes, sir.

385. Q. And then it was about 5 or 6 minutes from the time those whistle signals stopped until you blacked out?—A. I didn't have no watch or anything up there.

386. Q. That is your best estimate of the situation?—A. It could have been that long; it may not have been that long; I don't know.

387. Q. But that is your best guess as to the relative periods of time?—A. I wouldn't say exactly but it may have been 4, 5, 6 minutes; I don't know.

388. Q. For how long a period of time do you think the whistle signals were being made? I mean from the first blast until the last blast by the *Washington?* About how long a time do you think is involved in that?—A. I heard the short blast.

389. Q. You heard what? I didn't get the answer—A. The short blast. I don't know the period of time.

390. Q. Were the blasts separated? I mean did they all come in fairly regular intervals or did you hear one set of blasts and then a pause and then another set of blasts?—A. I heard two short blasts right together.

391. Q. Two short blasts right together?—A. Yes.

392. Q. And then what was the next thing that you heard?—A. I don't know if a long one or a short one. I don't remember.

393. Q. And how long after the two short blasts was it that you heard this next whistle, whatever it may have been?—A. Just a few moments.

394. Q. You say a few moments; do you mean a few seconds or a few minutes, or what do you mean?—A. I'd say around two or three minutes.

395. Q. So that first you heard two short blasts, and then in something from two to three minutes you heard some other whistle signal, that you heard this two or three minutes later. Can you tell me whether there was more than one blast in that whistle?—A. Yes; there was more than one blast.

396. Q. Was there more than two?—A. I don't remember, sir.

397. Q. There was at least two; you are sure of that?—A. Yes, sir.

398. Q. And these were long blasts as contrasted with the first signal which you heard and described as short?—A. Yes, sir.

399. Q. You said that the *Washington* changed course. I believe you estimated about 10 degrees to the right temporarily and later came back on her regular course?—A. Yes, sir.

400. Q. Can you estimate about how long you think she was off course?—A. Not very long

401. Q. A matter of how many minutes; a guess?—A. Oh, I don't know. I'm not very good at that.

402. Q. Was it 10 minutes, 20 minutes, 35 minutes?—A. I'm afraid to say. I don't know.

403. Q. Did you have any way of telling to your own satisfaction when she changed course and when she came back on course? That is, were you looking at any lights or anything which gave you in your own

mind an accurate object on which to determine any course change?—A. I don't remember, sir.

404. Q. What was the last thing you remember before blacking out?—A. Ringing the bells.

405. Q. When was the last time before the collision that you made any bell signals indicating ships on your port side if you had any?—A. Well, I'd say something around 1:15.

406. Q. That is the last time you recall seeing any ships on your port side or ringing a bell for ships on your port side?—A. Yes, sir.

407. Q. And for how long after making that bell signal indicating ships on your port side at 1:15 do you remember seeing those ships which you reported by bell off to port?—A. It went on across the bow and I never seen that come no more.

408. Q. Did you see any other ships on your port side after that one?—A. Yes. I saw two or three lights over. I didn't see the ships, just the lights.

409. Q. When was it that you saw these 2 or 3 lights over on the port side?—A. The same time I reported that one that was coming across the bow.

410. Q. The one coming across the bow. You mean the one which you were in collision with?—A. When I reported one light if they all run together that means all of them. That is the way I report.

411. Q. So that at the time you made that report at 1:15 you had one light that was crossing your bow from port side to starboard and in addition you had some two or three other lights off port?—A. In the same instance when I reported that one light.

412. Q. Right. Now, what happened to those other two or three lights that you reported, as you can best recall?—A. Well, they seemed like to me they was in the same spot all the time.

413. Q. You mean their bearing was not changing?—A. No.

414. Q. You or yourself on them as you proceeded on?—A. Yes, sir.

415. Q. And when was the last time before the collision that you recall seeing these several lights off to port?—A. Them lights as we were going ahead they was coming more like we were passing them, coming further down; I'd say around 3 points and then about 3½ points, the last I saw of them.

416. Q. You say they were passing you. You mean they were passing you from your port to starboard or from starboard to port, or how?—A. I couldn't say if they were passing us or not.

417. Q. Your last recollection of them then is still being on your port side?—A. On the port side.

418. Q. And how long before the collision or before you blacked out was it that you recall last seeing these vessels when they were on your port side?—A. They were still on our port side and some on our starboard side also.

419. Q. At what time?—A. When I reported.

420. Q. When you reported, and at what time did you make this report?—A. The ones I saw on the starboard bow they seemed like to me they was just sitting there, anchored. I don't know, I couldn't swear, nothing like that.

421. Q. All you know is that they seemed to be in the same position to you all the time, their lights didn't change?—A. But this one light coming from the starboard side.

422. Q. The one light that you followed and that came in collision with you kept changing?—A. Yes, sir.

423. Q. Coming closer all the time?—A. Coming closer.

424. Q. These other lights all stayed in the same general position to you?—A. Well, I wouldn't say that but they seemed like moving certainly very little.

425. Q. I see. Now, these lights that were moving just very little were part of them on the port side?—A. Yes, sir.

426. Q. How many of them were on the port side?—A. Two or three, three or four, something—I don't know exactly how many.

427. Q. And how long before the collision was it that you last remember seeing these 2 or 3 or 3 or 4 lights over on your port side somewheres?—A. Around 1:15.

428. Q. You don't recall seeing these lights on your port any time after 1:15?—A. Yes, I saw them until about 1:30.

429. Q. You saw what, still 2, 3, or 4 of them around 1:30?—A. It seems the lights went out; I don't know what happened.

430. Q. You saw them about 1:30?—A. Yes.

431. Q. Do you recall seeing them any time after 1:30?—A. No, sir.

432. Q. At 1:30 did there seem to be more of a concentration of lights on your starboard or your port side?—A. What do you mean, sir?

433. Q. In other words, about 1:30 when you didn't notice these lights any more over on your port side; just before you lost sight of the lights on the port, did it seem while standing up on the forecastle head that there was more lights over on the starboard side than there were over where you saw these two, three, or four lights on the port side?—A. Yes, sir; there were.

434. Q. About how many more, can you estimate?—A. No, sir.

435. Q. You said a little while ago after you went on the poop deck you didn't know exactly when——
A. What would you call the poop deck?

436. Q. Wherever you went after the collision. Where did you go after the collision. What I'm getting at is that you said a while ago that after the collision you got up and were stirring about and you saw the ship off in the distance which you presumed which was the Navy ship you had been in collision with; is that right?—A. Yes, sir.

437. Q. Now, at the time you saw this Navy ship off in the distance, did you notice what lights she had on?—A. No, sir. I did not.

438. Q. Did you notice whether she had a white light?—A. I was still addled. I don't know what I saw.

The BOARD. Does anyone else have any further questions of this witness?

Mr. BRUSH. No.

Cdr. SCHLEGEL. No.

By the BOARD:

439. Q. Is there anything further you wish to state which has not been brought out in this Board so far that you think should be a matter of evidence?—A. No.

Neither side, the parties in interest nor the Board desired to further examine the witness.

The witness was duly warned, dismissed, and he withdrew.

* * * * *

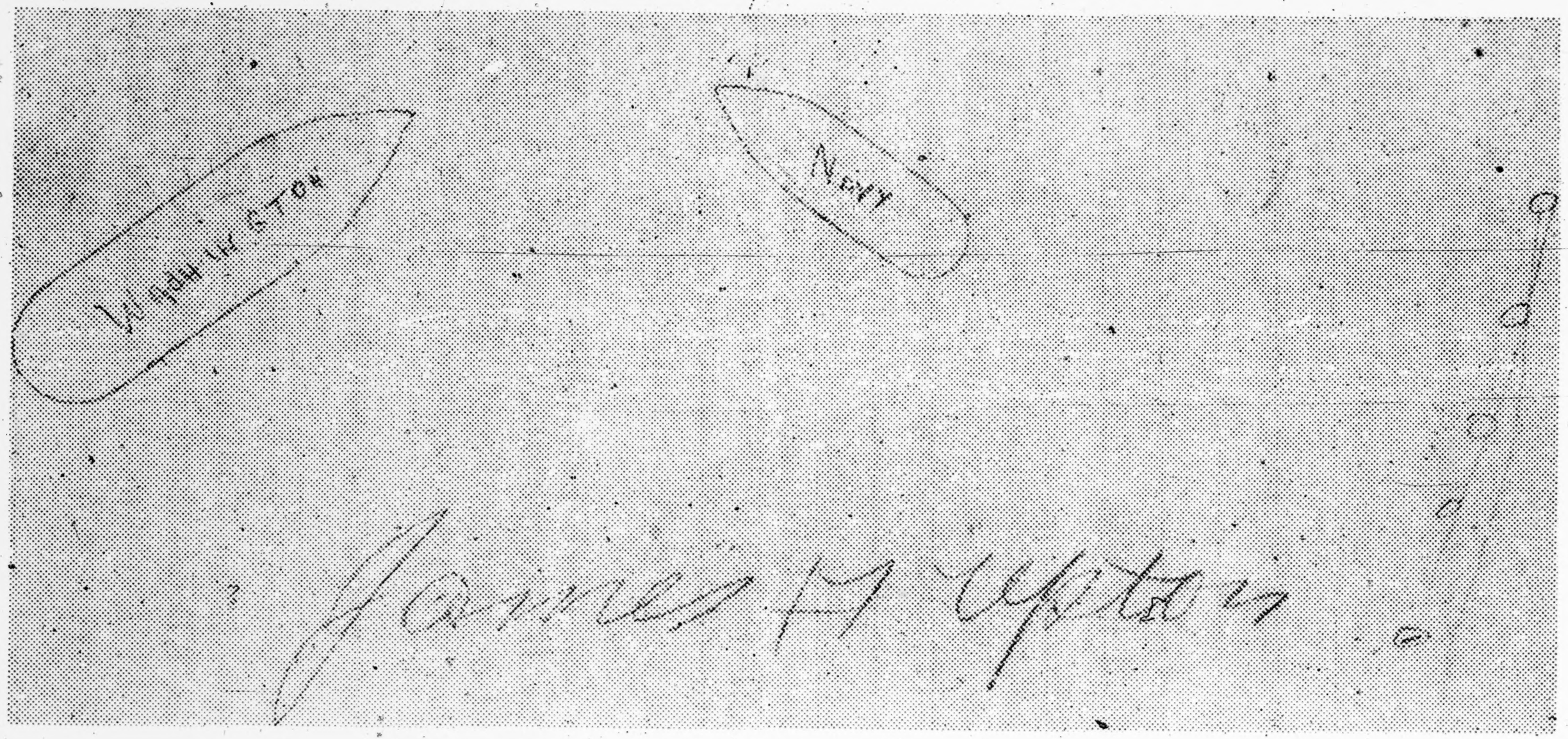

Exhibit 10.

Excerpts From Deposition of James L. Smith, a Witness for The Texas Company, Taken at Boston, Massachusetts, on August 29, 1955

[2] Direct interrogatories by Mr. BRUSH:

Q. Mr. Smith, where do you live? Have you a shore address?—A. R. F. D. 3, Laurel, Delaware.

* * * * *

Q. How long have you lived in Laurel, Delaware?—A. Well, all my life. I was born and raised in the same place.

Q. What is your occupation?—A. Seaman.

Q. How long have you been going to sea?—A. I have got [3] about fifteen years sea time.

* * * * *

Q. Do you have a ticket or a license of any kind?—A. A second mate's license, yes, ocean.

Q. In November of 1952, were you a member of the crew of the Tanker *Washington* at the time she had a collision with the Navy Destroyer, U. S. S. *Ruchamkin*?—A. Yes.

Q. Do you recall now where and about when you joined the *Washington*?—A. November 1, 1952.

Q. And in what port?—A. Newburgh, New York.

Q. What was your position on the *Washington*?—A. AB.

Q. What watch did you have?—A. The 12 to 4 watch.

Q. Will you tell us in a general way what your duties were on the *Washington*?—A. Well, the 12 to 4 watch, the AB has the first lookout from 12 to 1, and then he is [4] relieved by the ordinary seaman. He goes back and has a break until 2 o'clock, when he

relieves the quartermaster for a half hour. The quartermaster is relieved for a half hour for coffee, or rest period, rather. Then at 3 o'clock, he is supposed to relieve the lookout until 4.

Q. On the night or morning of this collision, did you go on watch at midnight or thereabouts?—A. Yes.

Q. And where did you first stand your watch?—A. On the bow—forecastle head, they call it.

Q. Did you relieve a man who was lookout at that time?—A. Yes.

Q. When you went up on the bow at midnight, what was the weather like?—A. The weather? Oh, the sea was smooth and the visibility was good.

Q. Do you recall now about where the *Washington* was at that time?—A. Well, between Cape Henry and Cape Hatteras.

Q. Do you recall also whether she was light or loaded?—A. She was loaded.

Q. Is the *Washington* what is commonly known as a T–2 tanker?—A. That is right.

Q. Do you remember now where the *Washington* was bound?—A. Philadelphia.

Q. How long did you remain on lookout up on the bow?—[5] A. One hour, from 12 to 1.

Q. During that period, did anything unusual occur?—A. No. No, nothing unusual.

Q. Did you have a practice on the *Washington* to report lights that you observed?—A. Oh, yes.

Q. What was that practice?—A. Well, it is the routine practice on most ships by bell signal.

Q. And what do you do?—A. That is when you are on the forecastle head where there is a bell. Otherwise——

Q. Yes?—A. Well, one bell is starboard, two to port and three, dead ahead.

Q. And then, is there any practice about receiving a reply from the bridge?—A. Yes, the mate usually hollers out, "Very well," to recognize the bell. Of course, when you are way up on the forecastle head with no other communication, sometimes you can't always hear.

Q. Is that the common practice on most ships?—A. That is common practice if you are on the forecastle head.

Q. Now, when it came around to 1 o'clock and you went off watch, who relieved you?—A. One o'clock, Ordinary Seaman Upton.

Q. When you relieve each other or when you did relieve each other or he relieved you, did you have any conversation and, if so, tell us what the substance of it was.—[6] A. Very little conversation, except just on line of duty. I report the lights to him tell him where they are at—some on the port and some on the starboard—and I told him at that time that I thought that they must be Navy ships.

Q. Do you remember now where the *Washington* was about 1 o'clock?—A. The location, you mean? The latitude?

Q. Yes.—A. Well, she was a little south of Cape Henry, a right good ways offshore and, actually you couldn't see no land.

Q. Are you familiar with the approximate speed of the *Washington* at that time?—A. Well, yes. Running full speed, a T-2 should make between 14 and 15 knots.

Q. And is it your recollection that the *Washington* was making about that speed during your watch as lookout that night?—A. Yes. Yes, I would think so—full speed.

Q. When Upton relieved you, did you tell him that there were some lights on the port and on the starboard?—A. Yes.

Q. And did you also tell him that you had reported those to the bridge?—A. Yes.

Q. Thereafter, what did you do?—A. Thereafter, when I left there, it was fairly chilly that night and I don't think I was out on deck too much. I was just around the mess room waiting for a call, if they need you or anything, and [7] I didn't see anything going on until 2 o'clock.

Q. When Upton relieved you at 1 o'clock and you pointed out these lights on the port and on the starboard, were any of those lights close by?—A. No, no. They were six or seven miles away, at least.

Q. Did you remain aft until 2 o'clock or thereabouts?—A. Well, about seven minutes of 2, I started to walk up to the bridge. You always relieve a little bit ahead of time, or try to.

Q. Do you remember now what route you followed or how you went up there to the bridge?—A. Well, I went up on the—just left, and went up on the main deck, up into the midship bridge and then walked around on the starboard side and went in the door.

Q. As you proceeded from aft up forward to the bridge and thence into the starboard door of the bridge, did you observe any lights close by?—A. No. No, there wasn't anything real close by.

Q. I take it then you went in and relieved the man at the wheel?—A. Yes.

Q. And what was his name?—A. Caldwell.

Q. Where was the wheel on the *Washington* located with respect to the forward bulkhead of the pilothouse?—A. It is right in the center of the wheelhouse. [8] Q. And about how far abaft of the forward bulkhead portholes would you say?—A. Oh, it is about seven feet.

Q. And where did you stand your watch, in front of or behind or how?—A. Oh, behind the wheel, naturally.

Q. Do you stand or did you stand on a little platform of any kind?—A. Yes, yes, a grating.

Q. Do you you remember now, as you took over the wheel, what course the *Washington* was steering?—A. 9, 009.

Q. And would that be true, gyro, or what?—A. True gyro heading.

Q. By the way, who else was on watch at that time in the pilothouse?—A. The mate. Riche was the mate on watch? second mate.

Q. Was there anyone else in the pilothouse?—A. No.

Q. Thereafter, until the collision occurred, did anyone come into the pilothouse before the collision?—A. No.

Q. Let us take your watch at the wheel. When you took over, you said it was on 009. Did you, after that receive any orders from the mate to change that course and if so, just tell us what those orders were?—A. Oh, I wasn't up there long before he evidently saw some ships ahead or close on the port and he wanted to go right, so he says, "Right." Oh, "Right 10"—10 de-

grees. Yes; and I put the wheel about 15 degrees right, and [9] I said, "Well; do you mean the compass or the rudder?" He said, "The compass." But then he says, "Midships," and then he wanted to know how I was headed when he said, "Midships," and I said "25." So then she started to swing back again, which 19 should have been the course at 10 degrees to right; so he wanted to know again. I says, "24," or thereabouts, and we finally got around to 23 and he says, "Well, keep her on 23." So we kept her on 23 for a while and then, I suppose, when he got everything clear again, we come back on the course again. 009.

Q. Now, in the pilothouse at nighttime like that, is there a clock visible to you?—A. Yes; there was a clock up on the starboard bulkhead.

Q. Could you see it in the dark or did you have to turn a light on?—A. No; I could see it.

Q. Have you any idea of how long you were on 23?—A. I think about five minutes.

Q. And then you received instructions to go back on 9?—A. Yes.

Q. And what did you do?—A. Well, I put the wheel to left and went back to 9; and then, when we got on 9, steadied up and go right along.

Q. During the time that you were turning to 23 and remained [10] on 23, did you observe any lights of other vessels?—A. No, no. I couldn't see very well out there.

Q. And then, when you got on 9, did you ever steady up on 9?—A. Oh, yes. That was the course from then on, 9.

Q. After you had steadied on 9 then, I take it, something occurred. Will you tell us what occurred, or

how long were you on 9?—A. Well, I was on 9 up until the time he gave the order, "Hard left," to try to avoid the vessel. Yes. Well, he evidently saw a bunch of Navy ships over on the right—ships, rather; we will call them ships—over on the right; and he did make a remark about their coming this way. So, I started to look out of the porthole, naturally, as much as I can; and then, finally, I see this red light through the starboard porthole; and just about that time he says, "Hard Left." And I made the remark, "It is right on top of us," but he wasn't paying no attention to that anyhow. The order was already given, "Hard Left." So, when he went out onto the port wing of the bridge, he says, "Hard Left," again. And of course I said, "The rudder is hard left," but I even stepped off the platform to have more purchase on the wheel, see, to get it over in a hurry.

Q. When he made this comment about the ships seem to be coming closer this way, you were then on 9?—A. Yes.

[11] Q. Had gotten back on 9?—A. Yes, at that time we were back on 9, I guess.

Q. Did you ever see any colored lights on the ships that seemed to come closer to you?—A. No, the only light I saw was that red light through the starboard port hole. That was a red line kind of thing, see.

Q. Was that far away or close to you?—A. Oh, that was very close.

Q. How did it seem to be traveling, slow or fast?—A. Well, it didn't seem to be traveling too fast at that particular time. Of course, it was practically 90 degrees on the bow at that time, anyhow. He was going right straight across. I don't mean—wait a minute. I mean—say, here is the bow over here [indicating].

In other words, he was about 4 points from there, speaking of the compass. But then he was—it was about a triangle, you see. He was 4 points this way, but he was very close on the bow. That is what I mean by 90 degrees. When I say 90 degrees, that sounds as if the ship was abeam of us, speaking of the navigation equipment. That is what you always figure your bearings from, your navigation, the compass.

Q. When the mate apparently observed this light, you say he went out on the port wing?—A. Yes. He went out on the [12] port wing at the same time he said, "Hard Left."

Q. And then what happened?—A. Well, then I could see through the forward port. You see, we have got three ports, and I could see through the forward port then and I saw the ship. He didn't seem to go right. He seemed to go right straight across and you were wondering why you didn't make contact sooner than you did. He did get half way across, about midships, before we made contact, and we were swinging left all the same time.

Q. And how were your engines going?—A. Well, the engines were going the same speed ahead all the time.

Q. Until what time? Were they ever changed?—A. Well, they weren't changed until after we made contact.

Q. About how long after?—A. Well, just so long as it took him to get back from the wing of the bridge and reverse the engines; half a minute, I guess. That is about all.

Q. Did your ship sound any whistles, do you remember?—A. Yes, sounded short blasts.

Q. About how many?—A. Four or five short blasts.

Q. And when were those whistles sounded with respect to the order that you got?—A. That was sounded

just after he says, "Hard Left," and before the ships collided. Just a very little while before.

Q. Do you remember now what the heading of the *Washington* [13] was when the ships came together?—A. No, I don't know exactly the heading at the time they came together, where we were swinging left on this 9 degrees. She hadn't swung very far, anyhow.

* * * * *

[19]

Cross-examination by Mr. McGOVERN:

Mr. Smith, when you reported to the Tanker *Washington*, were you assigned to a regular watch and did you stay in that watch?—A. Yes.

Q. That was the second mate's watch?—A. Yes.

Q. Riche?—A. Riche.

Q. You had the same other members of the deck department in that watch, or did they change?—A. This ordinary seaman that was on watch there at the time of the collision, he came on board at Port Arthur.

Q. Upton?—A. Yes. The other fellow that got off down there, I wouldn't hardly know him if I saw him, even though we stayed in the same room there for one trip down. But this Upton is the one that go on at Port Arthur.

Q. How about Caldwell? Had he and you been on watch together?—A. Yes. He was on there all the time. He [20] was on there when I left.

Q. How did they divide up the watch? I noticed on your direct testimony that the quartermaster appeared to be doing most of the steering.—A. That is right. He steered three and a half hours, you might say, and this AB, myself, only relieved him for a half hour. I was relieving him at the time.

Q. Did the quartermaster ever stand a lookout watch?—A. No.

Q. The quartermaster on this ship worked for three and a half hours out of four hours as a helmsman?—A. Yes, and the other period was a rest period.

Q. Is that true with respect to the ship that you are on now?—A. No. No; the ship that I am on now don't carry a man that they call a quartermaster.

Q. In your experience in going to sea——A. They carry two AB's.

Q. Yes. In your experience in going to sea for all of your life——1933, wasn't it, when you first went on board ship?—A. Yes.

Q. Have you run into any other companies where they have had this system where the quartermaster stood almost the entire watch at the wheel?—A. To tell you the truth, I don't believe I ever was with any other company but that. There is companies, but I haven't been there.

[21] Q. How about the mate? Where did he usually stand his watch?—A. In the wheelhouse.

Q. You are on a T–2 tanker. Was the wheelhouse a standard T–2 tanker wheelhouse?—A. Yes; that is right.

Q. You had wings in the bridge?—A. Yes.

Q. You had portholes facing forward?—A. Yes.

Q. Were they round portholes or square portholes?—A. Round.

Q. Could they be dogged down with heavy glass?—A. Yes.

Q. Were they dogged down with heavy glass on the night of the collision if you remember?—A. I don't know for sure.

Q. How about the wings of the bridge?—A. The wings of the bridge was—there wasn't no cover over the top of the wings. It was wide open, plenty of visibility.

Q. You had a clear wing on the starboard side and a clear wing on the port side?—A. That is right.

Q. Were there doors between the wings of the bridge and the wheelhouse proper?—A. No; the only doors went right in the wheelhouse. I think what you mean is a blind there, probably, where you have got another door. No; that wasn't there. There was only just one door; that is, you went in and you were there.

Q. The whole thing was a big spreadout, then?—A. Yes.

Q. If you went out on the wing of the bridge, you had [22] visibility up and down and then a sweep around at that side; is that right?—A. Yes; that is right.

Q. If you went out to the other wing of the bridge you had visibility up and down and a sweep around?—A. That is right.

Q. Where was the gyrocompass with respect to the portholes in the forward part of the wheelhouse?—A. Well, the gyrocompass is placed off to the left on most all these ships, and that one, too. That is the gyro repeater you are speaking of?

Q. That is right. The gyropeater, the one you steer by.—A. Yes.

Q. Was that masked so that you could just see the little top part of it?—A. Yes.

Q. Would it make a ticking sound as you swung?—A. Yes.

Q. Where was the wheel with respect to the gyro compass repeater?—A. Well, the wheel is placed just about on the keel of the ship, right in the middle point of the ship.

Q. How far was the wheel from the gyrocompass repeater?—A. Oh, two and a half feet. That is, the middle of the wheel.

Q. Where was the radarscope?—A. Well, the radarscope, the radar machine, which is what you mean, was over to the left of the gyrocompass, right over next to the bulkhead [23] on the ship.

Q. So that, when you stood at the wheel, you would look forward and out one of the portholes?—A. Yes.

Q. But you couldn't see unrestricted?—A. That is right.

Q. Could you see out the other porthole which was on your right side, as you stood at the wheel?—A. The only one you could see out of was just a little aft of you. You could see out of that.

Q. How about the one on your left hand, could you see out of that, or was the gyro in the way?—A. Oh, no. The gyro—you can see out of all three of them portlioles. But, naturally, there is a partition in between which blocks off the sight.

Q. Could you see the gyroscope from where you were standing at the wheel?—A. You mean the radarscope?

Q. The radarscope. I am sorry.—A. Well, yes. But when you have got the helmsman's job, you can't very well plot anything on it. You can probably see an object on the radarscope, but that would be just about as far as it could go.

Q. You would have to leave the wheel and take a couple of steps to go over there to look at it?—A. Yes, to see anything worthwhile.

Q. You wouldn't be allowed to leave the wheel?—A. No. That [24] wouldn't be in your line to leave the wheel at all like that.

Q. Were you allowed to smoke when you were in the wheelhouse?—A. No.

Q. Were you allowed to smoke when you were out on lookout?—A. No.

Q. Was the mate allowed to smoke in the wheelhouse?—A. Well, yes, on most all ships. Yes, there wasn't no restriction there. I have seen cases where they didn't but, no, they could smoke.

Q. Was he smoking that night?—A. I don't think so.

Q. Was Richie a heavy smoker?—A. No.

* * * * *

[26] Q. Put yourself back in your mind to the night when you went on watch, and you went on lookout. Did you relieve a man named Brown, or was it a man named Owens?—A. The one I relieved on the 8 to 12?

Q. Yes; the fellow from the previous watch?—A. I don't know what his name was.

* * * * *

Q. What, if anything, did the lookout tell you when you relieved him as he turned over the watch to you?—A. When I went up to relieve him at 12 o'clock?

Q. That is right.—A. I don't remember now whether there was any—I don't think there was any—let's see. [27] Yes, there was Navy ships out there at that time, too. Yes, there were ships out there at that time.

* * * * *

Q. Where did you stand your watch with respect to the forecastle head? Was there a wind dodger up there?—A. No; no dodger up there.

Q. You were out in the open, is that right?—A. Right out in the open. You could see all around the horizon.

Q. What kind of visibility was there? Was it foggy?—A. Good visibility.

Q. Did you see any lightships?—A. No.

Q. Could you see the lights of any other vessels?—A. At the time I was relieved, you mean?

Q. No, during the period that you were on lookout.—A. Well, no. I think these Navy craft were about the only ones I saw.

Q. When did you see the Navy craft?—A. Well, practically the whole watch they were upon the port and starboard, you know.

Q. How did you know or surmise that they were Navy craft? A. Well; they were in kind of a formation and I figured [28] that the only thing they could be would be either Navy or fishermen, and the Navy ships are usually heavier. One of them had a red light, I believe, on the foremast.

Q. Was there any blinking back and forth?—A. Yes, there was a little blinking, too. That was the biggest reason I figured they were Navy.

Q. You sailed during the war?—A. Yes.

Q. Did you sail in convoy?—A. Yes.

Q. You were accustomed to seeing ships in formation at night?—A. Yes.

Q. When Upton relieved you, what, if anything, did you tell him with respect to the ships which you had seen?—A. Well, I told him there were ships on the starboard and on the port and I said that I thought they were Navy ships.

Q. Did you tell him that you had reported them?—A. Yes.

Q. Had you reported them?—A. Yes.

* * * * *

[29] Q. After you were relieved by Upton you went back and had a cup of coffee, did you tell us?—A. Oh, yes.

Q. And then you went up and relieved Caldwell?—A. Yes, at 2 o'clock.

Q. When you were on the wheel at 2 o'clock, and I want to call your attention to the fact that the collision occurred about 15 minutes after 2, so I am trying my very best to get your recollection as it happened from 2 o'clock on, was there any report by the lookout of any vessel?—A. Yes. Well, just before two, he rang one bell. That indicated a ship on the starboard side.

Q. Did the mate reply to this?—A. Yes, he said, "Very well." Then after 2 o'clock, there was another bell.

Q. How shortly after 2 o'clock?—A. Oh, that was about five or six minutes after two, I guess.

Q. Was this a single bell, too?—A. Yes.

Q. Did this indicate a ship on the starboard side?—A. Yes.

Q. Did the mate reply to this?—A. Yes.

Q. How much time do you estimate elapsed between the time that the mate said, "Very well" to this second report of a ship on the starboard side and the time that he told [30] you that there were ships on the starboard side?—A. Oh, that wasn't over three or four minutes either, I guess, that he mentioned about the ships being over on the starboard side.

Q. Did he say anything about which way they were coming?—A. He said they were coming towards him, yes. Ships over on the starboard side—no, he said, "There are ships coming this way." Of course, he was on the starboard side. That was the side he was looking. Yes, they were coming towards us on the starboard side, which is a very bad indication because you don't like anything coming towards you on the starboard side, if you can help it. The port side is bad, too, but—[pausing].

Q. Since you hold the mate's license, you appreciated the importance of the starboard side, is that right?—A. Yes.

Q. Did the mate make any effort to call the captain at this time?—A. No.

Q. Did the mate make any effort to call the captain before the collision occurred?—A. No.

Q. Where was the captain's quarters with relation to the bridge?—A. It is right down on the next deck.

Q. Is there a speaking tube for communication?—A. Yes.

Q. Do you know why the mate didn't call the captain?—A. No.

Q. Have you thought about it before I asked you the question?—[31] A. Well, no. No, I didn't even think about it. The only thing I think—maybe he didn't think it was worth while until after the collision. It was too late then, just like anything else. He didn't have to call him after the collision because the whistles woke him up, see?

Q. About what time was it that you changed course from 009 on your gyro over to the right when you went, I think, to ——A. 23.

Q. To 023, from 9 to 23? About what time was that with respect to 2 o'clock?—A. That was right after I relieved the man on the wheel, right around 2 o'clock.

Q. Just about 2 o'clock?—A. Yes.

Q. At that time did your ship blow any whistle signals?—A. No.

Q. About what time was it that you changed course back from 023 back to your main course of 009?—A. We were on that course, I think, about five or six minutes, you know, and then we went back.

Q. So it would be five or six minutes after two, is that right?—A. Well, and then it takes a little while to get back on the course from that course.

Q. Now, when your vessel changed course back to your main course, did you blow a whistle?—A. That is

the first [32] time anybody has asked me about that. I was surprised. No.

Q. You mean you were surprised that nobody asked you that question before?—A. Yes, because it is not done anyhow most of the time on ships.

Q. You were surprised that the Coast Guard didn't ask you that weren't you?—A. Yes, sure. I was surprised the Coast Guard didn't ask me. It is not done, but that is the international rules of the road, anyhow. Whenever you change your course, if it is to the right, you blow one whistle; to the left, two.

Q. At any time?—A. At any time, yes.

Q. That is your understanding?—A. Yes. Isn't that right?

[Discussion off the record.]

Q. Let's get back to your radarscope. Was anybody looking at the radarscope at any time from 2 o'clock on?—A. No.

Q. Was the mate looking at the radarscope?—A. No.

Q. Where was the mate?—A. Looking out the porthole.

Q. Before you testified here today, did you look at your testimony before the Coast Guard?—A. Yes.

Q. I call your attention there that you were asked this question, Question 122: "Was anyone operating the radar, I mean anyone [33] giving it any attention, or was it running by itself?"

And your answer was: "Well, he was looking in it once in a while, I would say, but then the ships was in view. He was more or less concentrating his viewing of them rather than the radar." Is that correct?—A. Yes.

Q. Well, now, you understand that to lawyers that may be inconsistent with the testimony you have just given. Do you want to explain the difference between

the two of them? I am not trying to trap you. You see, you told the Coast Guard that he looked at the radar once in a while and you just said here that he didn't look at the radar— and we just want to get——A. Well, if it is just that little much difference, he looked at it once in a while, then. We will have it that way.

Q. Well, we don't want to just have it.—A. Well, like I say, he did. Of course, like I say, it has been almost three years ago and I can't remember just exactly what happened, see. He probably was looking at the radar once in a while, but he was concentrating more on the visibility of the ships.

Q. Did any vessel appear to signal to you before the [34] collision?—A. Yes; there was a vessel trying to signal. Whether it was to us or not, I don't know. I think the mate figured it was, maybe.

Q. When did this signal first come in?—A. Well, that was a right good while before the collision.

Q. About 2 o'clock?—A. It may have been a little after two; two or three minutes after two.

Q. Not as much as five minutes after two?—A. I don't think so.

Q. From what side did this signal appear to come?—A. It was on the starboard side.

Q. How did the signal come; by flashing?—A. I couldn't see it. It was a series of A's, I figured, yes, to attract any ship in the vicinity. I have heard since that the light flashes are when you are on a speed run, or something. We figured—I did and he did, too—that they were trying to signal.

Q. How do you know he figured that they were trying to signal?—A. Because he tried to make contact with them; see.

Q. Tell me about that—A. He used the blinking key for a while.

Q. Where was the blinking key?—A. I believe he had a portable key there plugged in that he used.

[35] Q. Where did the blinker come out?—A. The blinker was on the yardarm.

Q. The yardarm?—A. Large blinking lights. That is the one he was using.

Q. On a T-2 tanker, where is the yardarm with reference to the bridge—A. It was right over the top of the bridge.

Q. What were the lights which would have been blinking? What color were they?—A. Oh, white.

Q. They were white?—A. Yes.

Q. Do you know what he was trying to send back?—A. No——yes. I think he was just sending them a dash, maybe, to try to get them to say something, whatever they wanted to say, and he finally gave it up. He figured they were trying to call us, so he gave a dash to show that he had seen them, you see; and then if they wanted to say anything, they could. But, there wasn't nothing said, I don't think.

Q. Did this signalling keep up for some time?—A. No; not long, a couple of minutes.

Q. How long would you say it was 'tween the end of the signalling and the collision?—A. How long between the end of the signalling and the collision?

Q. Yes.—A. Well, I guess it was about ten minutes.

Q. As much as ten minutes?—A. I think so, yes. It wasn't [36] much after 2 o'clock before—I mean when he first started signalling with him, you know.

Q. You mentioned in your direct testimony about fishing boats. When did you first hear that anybody on your vessel thought these were fishing boats?—A. Well, who said that anybody thought so?

Q. What?—A. Who said that anybody thought so?

Q. In your direct testimony, you mentioned fishing boats?—A. Well, the only one that thought so was

myself, probably. I mean, nobody said anything about thinking they were fishing boats.

Q. Did you think they were fishing boats?—A. I said I either thought they were fishing boats or Navy boats.

Q. You saw the blinker?—A. Then I thought they were Navy ships.

Q. I was wondering, because you wouldn't expect fishing boats to be blinking, would you?—A. No.

Q. And fishing boats carry a different set of lights from Navy vessels, particularly if they have got their fish nets out?—A. Oh, if they have got their fish nets out, they do. Yes, you can usually tell a Navy ship.

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[37] Redirect examination by Mr. BRUSH:

Q. [39] I am talking about the blinking at 1 o'clock from which you concluded and commented to Upton that they probably would be Navy ships. Where were those lights with reference to the *Washington?* How did they bear?—A. They were bearing about 2 points on each bow, the same ships that I was speaking about, you know, up on the bow, on both sides.

Q. Yes, that is what I thought. How far away were they?—A. Well, they were about six or seven miles.

Q. And you think you could have seen the blinkers at that time at that distance?—A. Well, I tell you. A shutter light you can see just about as far as anything, the regular high powered Navy which they use.

[40] Q. Have you any idea in which direction those lights were traveling?—A. They didn't blink very long, anyhow. We know—I was almost sure that they weren't blinking at the *Washington.* They were

that far away, see. It was just a matter of flashing which you could see amongst the ships themselves.

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Excerpts From the Testimony of Oliver Francis Riche, a Witness for the Texas Company.

Direct examination by Mr. BRUSH:

[752] Q. Now, in November 1952, what vessel were you on?—A. I was then Second Mate on the S.S. *Washington*.

Q. When did you join the *Washington* previous to November 14, 1952, when she had the collision with the *Ruchamkin*?—A. Well, it was sometime in August, I think. I am almost sure it was in August.

Q. And did you thereafter remain on the *Washington* until at least the date of collision?—A. I remained on the *Washington* until after the collision, went to drydock, and had the necessary repairs, and [753] went back to Port Arthur.

Q. During that period what was your position on the *Washington*?—A. Second officer.

Q. As second officer what watch did your have?—A. I had out at sea the twelve to four watch and in port sometimes I'd stand somebody else's watch with mine. My regular watch was the twelve-four watch, though.

Q. That is the regular second mate's watch?—A. Yes, sir; twelve to four watch.

* * * * *

[754] Q. Now when did you go on watch on the night of November 13–14, 1952?—A. At twelve o'clock, midnight.

* * * * *

[755] Q. What was the weather like when you went on watch?—A. Well, it was a very dark night and no moon and a calm sea with a light breeze.

* * * * *

Q. Do you remember what course the *Washington* was on as you took over the watch?—A. Yes, sir; the course was zero zero nine gyro.

Q. Were you steering by gyro?—A. Yes, sir.

[756] Q. Did gyro have any error in it?—A. It did, sir.

Q. How much of an error?—A. It had approximately a degree and a half west.

Q. At what speed was the *Washington* traveling?—A. We were making approximately fourteen and a half knots.

Q. Was the *Washington* exhibiting any lights?—A. Yes, sir; we were exhibiting the actual complement of running lights, the side lights, the masthead lights, the range light and stern light.

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Q. Now first let us take the period from midnight until one o'clock. Did anything occur during that hour after you went on watch?—A. Well, there was ships on both sides of me, lights, white lights. I could see both sides of me, and nothing unusual occurred.

Q. As you took over the watch at midnight did you have any conversation with the other mate about lights that were [757] visible? Did he report any to you?—A. Yes, sir; he did. He told me there were lights on the—he asked me could I see those lights on the starboard side and could I see those lights on the port side. I said, "yes, sir; I see very well."

Q. And then you took over?—A. And then I took over the watch; yes, sir.

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[758] Q. What equipment for navigational purposes did you have in the wheelhouse besides the wheel?—Well, sir, we have a rudder indicator, a revolution indicator, maneuvering telegraph, a docking telegraph, a radar.

Q. Was the radar turned on when you took over the watch?—A. Yes, sir; it was.

* * * * *

Q. Now on this night as you proceeded along, was there anyone stationed as lookout?—A. Yes, sir; there was.

Q. Can you tell us who that was and how long he stood [759] lookout?—A. There were two lookouts. There was, Mr. Smith was on standby lookout, and Mr. Upton.

Q. Who was on lookout from midnight to one o'clock?—A. Midnight to one o'clock was—let's see——

Q. Do you remember who was lookout at the time of the collision?—A. Yes, sir. Mr. Upton was on lookout at the time of the collision, so that would put Mr. Smith on lookout from twelve to one because he relieves the wheel at two o'clock.

Q. Now you have mentioned Mr. Caldwell, Mr. Smith, and Mr. Upton. Were they the only three seamen on watch during this period of midnight until four o'clock?—A. On deck; yes, sir.

Q. On deck. That's what I mean. Will you describe in a general way what the routine of their watches were at this time?—A. Yes, sir. Mr. Smith went on lookout from twelve to one. Then Mr. Upton would relieve him and Mr. Smith would go on a standby lookout aft. And at two o'clock he relieves Mr. Caldwell, the Quartermaster, for a rest period of thirty minutes.

Q. Now is that what occurred on this night?—A. Yes, sir.

Q. Going back, then, to the period from midnight until [760] one o'clock, did you observe any lights? I believe you have testified the mate that you relieved mentioned some. Do you remember what lights you observed?—A. Yes, sir. I saw some white lights on my port and starboard sides.

Q. Can you tell us a little more about the white lights on your starboard side? How they bore, where they were, if you can tell us how far off they were?—A. Well, sir, there were some from as far as I could see on my starboard hand to abaft beam of me all along but well off.

Q. How many were there? Were there one, or two, or ten, or what?—A. There were many. I didn't count them.

Q. During this period where did you stand your lookout? Now I'm talking from midnight until one o'clock. We'll take that period first.—A. Well, I stood my lookout from the port to the starboard wing of the bridge through the wheelhouse and up on top of the flying bridge to check the compasses.

Q. Now let us take the next hour from one until two. First, about one o'clock, let us say, until one-fifteen or one-thirty, did you observe anything particular or did anything occur?—A. Yes, sir. About, I would say, about one-fifteen I [761] saw in addition to the white lights a green light on my port bow, and I watched that light very carefully, and I thought he didn't have intentions of going around my stern. So I told the Quartermaster, I says, "You see that light?" He says, "Yes, sir." I says, "Put it on your starboard bow and keep her there." And he did so. After the ship was well clear across my bow to my

starboard side, I ordered the ship back on the course of zero zero nine and proceeded on.

Q. That occurred about one-fifteen you said?—A. Approximately one-fifteen, but I don't know what time it was because I didn't look at the clock.

Q. Now will you continue on from that point and tell us what you observed and what was done? What you saw?—A. Well, we kept going on after I got back on the course zero zero nine gyro. We kept going along and I kept watching those lights going on my starboard side, going slowly astern of me, like I was passing them, or like it could have been ships that I was—slower than I was.

Q. What color were those lights?—A. They were all white lights on my starboard hand and port hand.

Q. Did you do anything to ascertain how close they were?—A. Yes, sir; at intervals walking across from one side of the bridge to the other like we generally do standing watch, I would go and glance in the radar.

[762] Q. And the radar was turned on, was it not?—A. Yes, sir; it was in operation.

Q. What scale was your scope on?—A. Well, we usually keep a fifteen-mile scale and that's what it was on that night, fifteen-mile scale.

* * * * *

Q. When you looked at the radar on these various occasions, did you ascertain approximately where these lights were?—A. Yes, sir. Looking at the lights and then glancing in the radar would tell me that they were passing, going to my starboard and aft to me. And that they were well off on my starboard side.

Q. Well now, to those of us who weren't there, tell us what you mean by well off.—A. Well, I would say

that anywheres between five and a half to six; some were as far as, off as fourteen miles. Never inside of five and a half miles or six miles.

Q. Then as you continued on, what occurred? You are now up to one-fifteen or one-thirty or thereabouts, as I–[763]—A. Well, we went on course zero, zero nine, and I sighted almost right dead ahead of me two red lights about the same plane, but the right, or starboard hand red light was further off, going across my bow from starboard to port and moving very fast.

Q. Now did these two red lights bear from the *Washington*——A. Well, they were almost dead ahead of my starboard hand, a slight bit on the starboard side, coming from, moving in from my starboard to the port.

Q. What else did you observe about these red lights?—A. Well, it seemed to me that they were close. Well close of me and going across my bow. They were bright.

Q. Were they going slow, or fast, or what?—A. The lights were moving very fast through this dark.

* * * * *

Q. What did you do?—A. I went. I was steering course zero zero nine at the time I saw the two red lights and I assumed these were very close to—I went right ten or fourteen, about fourteen degrees, which would be about twenty, zero twenty-three.

Q. And then what did you do?—A. I asked the Quartermaster, I says, "What are you on?" And he says, "Zero twenty-three." I says, "All right. Steady." [764] And I kept going until those two red lights that had crossed my bow were well on my port hand.

Q. Then what did you do next?—A. I ordered him back on course zero zero nine.

Q. And then what happened?—A. Well, about that time, when I ordered him back to zero zero nine, I saw a third red light.

Q. Now where did you see this third red light?—A. This third red light was very close to my starboard hand, and coming across from my starboard bow to my port bow at a terrific speed.

Q. Are you able to tell us where that red light bore from you when you first sighted it?—A. Well, it happened so fast and so close I could estimate it.

* * * * *

[765] Q. Now I believe you said, or perhaps my recollection is faulty about it, but tell me when you saw this red light, how was it traveling? What was it doing?—A. It was moving through the water very fast, sir. From my starboard to my port.

* * * * *

Q. What did you see and what happened next?—A. Well, the minute I saw this third red light, I was going from twenty-three to zero zero nine, when I saw it, and [766] when I saw that red light, I ordered the wheel hard left immediately and run to the port side of the bridge to see if by coming hard left, see if my vessel would clear the two red lights that had precedingly crossed my bow, and I watched that carefully, and I ordered hard left again and in the meantime also blew two blasts of the whistle followed by several short blasts.

Q. Then what happened?—A. Then the accident occurred, sir.

Q. Can you estimate the interval of time between the moment when you first spotted this third red light and the time the vessels came together in the collision?—A. Well, sir, that would be very, very hard to

give you the right, the exact time, but I would say in a matter of about thirty seconds.

* * * * *

[767] Q. Are you able to estimate or tell us exactly about when you saw these two red lights that you first saw? Are you able to fix that time?—A. Yes, sir; pretty close.

Q. How do you fix it? Did you look at the clock?—A. No, sir; in the wheelhouse we have a ship's bell clock. It rings every half hour.

Q. Yes, sir.—A. And it had struck four bells which indicated two o'clock, and it was after that time that I saw those two red lights, those first two red lights, which would be between zero two zero two, or maybe a little later. It could have been zero zero two zero, five minutes. Zero two zero five.

Q. Let us go back a little bit. You testified some time ago about the wheel watch changing. Do you remember now when that change occurred?—A. Very close to two o'clock, before.

Q. What was the change? I think you said that Mr. Caldwell was at the wheel?—[768] A. Mr. Caldwell's, what we call our regular Quartermaster, he was relieved by Mr. Smith.

Q. What time?—A. A little before two o'clock.

Q. And was Smith at the wheel when four bells or two o'clock struck?—A. Yes, sir; he was.

Q. And you think it was a little after that that you first sighted these two red lights?—A. Two red lights; yes, sir.

Q. Now when the collison occurred, when two vessels came together, what did you see and what did you do?—A. Well, sir, just before it, when I saw this vessel coming across, I looked over to my right a little bit and I saw some lights going around my stern, and

then I run to the port wing of the bridge to see that I had cleared those other two ships, or two lights that had just crossed my bow before that, and I blowed the whistle and at the same time I also said, "Hard left," the second time, and I blowed the whistle. The collision occurred. And I run from the whistle on the port wing of the bridge to the maneuvering telegraph in the wheelhouse on the starboard side and I rang full speed astern.

Q. When did you ring full speed astern with respect to the time that the vessels came together?—A. It was after the vessel had made contact that I rang [769] full speed astern.

Q. How long after?—A. Well, it was very shortly after because the only—about, I would say eight, or about a dozen steps from the whistle to the telegraph, and I ran there.

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[799] Cross-examination by Mr. McGovern:

[805] Q. Now let us get back to the night of the collision, of what was your health on the night of the collision?—A. What was my what, sir?

Q. What was the state of your health on the night of the collision?—A. Well, there was nothing wrong with me that I knew of.

Q. Now this is before the Captain gave you the phenobarbital.—A. Not anything that I knew of.

Q. Do you remember testifying before the Coast Guard?—A. Yes, sir; I sure do.

Q. Do you remember Coast Guard asked you this question? This is two to one—At the time you made these entries in the rough deck log, would you say you were fairly calm and collected? Answer, No, I didn't get calm and collected until quite a bit after I had a sedative. I was nauseated a [806] little bit and a

bad cold. Is that correct?—A. Well, to a certain extent it is, but I wasn't sick. I had a slight cold and after such an accident would happen to a man, I think I would be a little upset.

Q. Now I am interested in what your bad cold was like before the accident.—A. My bad cold? Approximately like I got now. I got a cold now.

Q. When did you become nauseated?—A. After the collision, upset the—upsetted my nervous system and due to that which is connected with the alimentary canal of my body, that it upset that also.

Q. Now did you see the place where the troops had been when your ship pulled away?—A. I didn't know where there was any such thing on the ship at the time.

Q. Then the reason for your nausea was then not the sight of blood?—A. No, sir; I did not leave the bridge, sir.

* * * * *

Q. Very well. [807] Now we'll go—and I want to ask you questions about the place where you were working on the night of the collision. What was the temperature outside when you went on watch?—A. When I went on watch, it was around, close to seventy degrees.

Q. Now what was the temperature inside when you went on watch?—A. We do not have a thermometer inside the wheelhouse and I don't know.

Q. Did you have any heat on?—A. No, sir; I had no heat on, absolutely not.

Q. What clothing were you wearing when you went on watch?—A. I was wearing a uniform khaki pants, suit of under—light suit of underwear and a short-sleeved shirt.

Q. You had no jacket?—A. No jacket; no, sir.

Q. Did you find that that clothing was sufficient for your protection throughout the watch?—A. It is sufficient for me. On several occasions when other people are cold, I am still comfortable.

Q. Now would you please describe the portholes which were in the bridge wheelhouse; where are they located?—A. Well, there are three portholes in the fore part of the wheelhouse, approximately thirty inches in diameter. [808] There's two large doors on the port and starboard side respectively. There's one porthole on the starboard side of the same diameter, and one porthole on the port side of the same diameter, and a door from the wheelhouse into the chart room, which was all open with the exception of the portholes.

Q. You're anticipating me, sir. What was closed about the portholes?—A. The portholes are clear glasses and they were merely closed, dogged down like all clear glass portholes are fastened with dogs.

Q. Now were they dogged down through the entire period of your watch?—A. I couldn't say that they all were dogged down. I would say that they were down.

Q. They were down during——A. That's right.

Q. Now were these a thick, glass porthole covering that they customarily have on ships?—A. Sir?

Q. They were thick, glass portholes covers?—A. Well, they were ordinary regulation, according to Coast Guard Regulations.

Q. Well, now, I would like to have you compare them with, say, the window glass in these windows.—A. I don't know that window glass would pass the Coast [809] Guard Regulations, sir. I don't know.

Q. We are merely interested in finding out how thick the glass was.—A. well, sir, the Coast Guard said it was sufficient for seaworthy, and, therefore,

when the Texas Company, accepted it as such and consider it that—I don't know the thickness of the glass.

* * * * *

[810] Q. Now there was a difference in your courses, wasn't there? I am looking at your logbook now, and according to [811] this logbook entry, you said your course for gyro is zero zero nine.—A. That's correct.

Q. And your course on your standard compass is zero one two. Right there.—A. Yes, sir; that is correct.

Q. Now where was your standard compass located?—A. The standard magnetic compass is located on the top flying bridge and in with the standard compass we have a steering compass which is in the wheelhouse.

Q. Now——A. And I generally—it is customary every thirty minutes to go on the top flying bridge, the flying bridge we call it, and check that compass with the magnetic compass to see the difference in the two and make a record of it.

Q. Now what was the difference in this night?—A. Well, sir, if you don't mind, I will look at this. I can't recall just what the difference was.

Q. Oh, no.—A. Well, in one, in this November the 14th, you mean?

Q. Yes, sir. I am only interested in the heading on, you were on—I am not interested in what it was before you went on watch.—A. Well, right here it shows after the collision we took departure from that collision. We changed course from [812] zero zero nine, which we were on preceding the collision, to zero zero five on gyro, and on the standard compass it shows zero one twelve, and that is a difference of

seven degrees, which accounted for the line of variation on the chart.

Q. You haven't given me your deviation. What was——A. I didn't give you a deviation because I don't know. We have a record of that in the record book. We are merely concerned with the error which is the difference between the two.

Q. What was the true course?—A. I can't hear you, sir.

Q. What was the true course which you were plotting on the chart in the chart room when you took over, zero zero nine; zero twelve, or some other.—A. No, sir; the true course was zero zero seven and a half.

Q. Now let me get back to the flying bridge. Now where is the flying bridge located with respect to the wheelhouse?—A. The flying bridge is at the topmost part of the structure, sir.

Q. Now you were up there yourself?—A. Yes; sir.

Q. Do you have another steering wheel up there?—A. No, sir.

[813] Q. You don't?—A. There is an extra one up there but we never use it.

* * * * *

Q. Was there anything about the weather on the night of November 14 which would prevent you from navigation on your flying bridge?—A. No, sir; but it's not customary to work up there because there's no gyro repeater there on a T-2 tanker, everything well visible inside and outside the wheelhouse, so, therefore, all the T-2's I have been on, they sail at sea or [814] going into port in the wheelhouse. It's very visible.

Q. Now on this bridge you have an open bridge on either side; is that correct?—A. Wing bridge as we call it.

Q. Wing bridge?—A. Yes, sir.

Q. All right. Now getting back to your location, do you have a little table or did you have a little table near the starboard porthole?—A. Yes, sir; we did.

Q. What did you keep on that little table?—A. Well, we used that table going in port for a table to write out the bell book and necessary papers. Sometimes the Captain used it to sign papers and we also, when we are, have any kind of use for the table, we use it to set something on it.

Q. Now, was this a table by a porthole which was closed?—A. Yes, sir; it was below the starboard porthole.

Q. Now were you smoking on the bridge during the watch?—A. No, sir.

Q. Which preceded——A. No, sir.

Q. You are sure of that now?—A. By the bridge, sir, I assume you mean the outside [815] bridge, and it's not—it's not our habit of smoking on the outside bridge on an open bridge on a tanker, sir.

Q. You wouldn't have lived this long if you had, would you?—A. That's right.

Q. Now did you smoke inside the wheelhouse during this watch?—A. Yes, sir; that is permitted to smoke in the wheelhouse, in your living quarters in the recreation rooms and certain designated places about the ship.

Q. Do you smoke quite a bit?—A. Well, I would say I smoke average.

Q. Well, now, how many cigarettes did you smoke?—A. I don't know, sir, how many I smoked. I didn't count them. I just smoke when I want to.

Q. Where do you keep the cigarettes?—A. Sometimes in my pocket, sometimes on, in the porthole. It all depends.

Q. On this particular night?—A. I don't recall, sir. I don't have no special place to keep them.

Q. You remember in the Coast Guard Question 205, you were asked, Can you recall the last time you were on the starboard side looking out the starboard side porthole of the wheelhouse before you moved to the center port of the——

[816] The Court. We cannot hear you.

Mr. McGovern. Before you moved to the center port of the forward bulkhead and thereafter observed these two red lights, the first two, and you answered, Well, I smoke quite a bit and that's where I keep my cigarettes and I generally lit one about every fifteen or twenty minutes and it was within twenty minutes that I'd be in that porthole because I know I had been smoking just a little previous to that. We have a little table there in the porthole where we keep our coffee cup and cigarettes.

The next question, 206, Do you customarily stand there while you smoke and drink your coffee, or do you move around? Answer, I move around with the exception of going outside the wheelhouse. We are not permitted to smoke outside the wheelhouse on account of explosive cargo that we carry.

Did you testify that?

The Witness. Yes, sir; but let me add something to that also. I do not drink coffee but once when I go on watch and that is before I relieve the officer on watch and, in other words, what I was drinking that coffee and smoking that cigarette you're talking about, I was not on [817] watch. The other officer was still on the bridge and I had not relieved him.

By Mr. McGovern:

Q. And your answer was with respect——

The Court. We cannot hear you.

Mr. McGovern. I am sorry.

By Mr. McGOVERN:

Q. Mr. Mate, your answer was with respect to cigarettes and the Coast Guard has you recorded as having said, Well, I smoke quite a bit and that is where I keep my cigarettes and I generally light one about every fifteen or twenty minutes and it was within twenty minutes that I had been in that porthole because I know I had been smoking just a little previous to that.—A. Yes, I said that.

Q. That refers to a period in the question, and the question was, Can you recall the last time you were on the starboard side looking out the starboard side porthole of the wheelhouse before you moved to the center port of the forward bulkhead and thereafter observed these two red lights, the first two.—A. No.

Now the answer is not correct then?—A. I didn't say it wasn't correct. I said no, I can't recall. You asked me could I recall. I said no.

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[818] Q. Did you in fact light a cigarette in the period between the time you took over the watch and the collision?—A. I probably lighted cigarettes; but I don't see anything against the law in that.

Q. We are merely asking you for facts. We are not asking you to draw the conclusion.—A. Well, I think I am allowed to smoke whenever I want to.

Q. Where, whereat were you standing when you did your smoking?—A. I already told you inside the wheelhouse where we are required to smoke if we wish to smoke.

* * * * *

[819] Q. Now can you tell us today how many cigarettes you smoked between taking over the watch and the time when you made your first change of course

at 0 one one five, according to your testimony yesterday?—A. No, I couldn't tell you.

Q. Was it one or more than one?—A. I couldn't tell you that either it was more than one.

Q. Well, now, I want to take you on each one of these episodes and I want to take you through each one with respect to what happened before you made a course change and what happened after. Now the first one that I want to take you on is you made a change of course to the left, or to the port hand and at 0 one one five, according to your testimony yesterday; is that correct?—A. No, sir; that is not correct.

Q. All right. What was your testimony yesterday?—A. I said that approximately. I didn't look at the time and I didn't know exact time, between one and one-fifteen. I made a course change to the left.

Q. Oh, it might have been one o'clock, it might have [820] been?—A. No, sir; between one and one-fifteen.

Q. Now had the lookout reported the lights of any vessel before you made that course change?—A. They reported white lights on both sides at all times all along, sir.

Q. I am only interested in the precise events. I don't want to learn anything except what you were told at this time.—A. Well, I am telling you that they reported lights from the time I went on watch, all along the watch, all the lights that appeared to them, but I happened to see those lights way ahead of the time that they saw them because they were on the forecastle and were much lower than I was, and when they reported lights to me, I could see them way ahead of them.

Q. How did they report lights? Did they have a bell system?—A. With a bell, sir.

Q. Now that is one bell for lights on the starboard, two bells for lights on the port, and three for lights dead ahead?—A. That's right. That's all lights.

Q. Now how did you acknowledge their reports?—A. Either by going—I always go outside, if the portholes are closed, and holler out to them, "Very well," "All right," or sometimes we answer them with the bell on the [821] bridge and some of us answer with a flashlight, just one flash.

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Q. Was Mr. Caldwell your helmsman when you made the first change of course?—A. At what time are you referring?

Q. Between one and one-fifteen.—A. Yes, sir; he was at the wheel.

Q. Now did you hear two bells from the lookout before you directed that change of course?—A. I heard bells, several bells before that, sir. There were ships before that, lights, and ships close together to that light, and he just kept ringing bells as the lights came to him, and I kept answering to him. Yes, sir.

Q. Now please give us the bells in sequence; which bell did he ring first; one bell for ship on the starboard hand, or two bells?—A. I already told you that when I went on watch at twelve o'clock there were several lights on my port and starboard side and they kept that way until the collision, and all the bells were sighted and answered that we could see.

Q. Mr. Mate, I am still interested in the bell that you got from the lookout which occurred before you made your [822] first change of course.—A. I don't know if that was the light that he saw when he rang that bell.

Q. I want to read you Mr. Caldwell's testimony before the Coast Guard, which is evidence in this case.—

A. Mr. Caldwell was not on lookout. He was at the wheel.

Q. That's right. He was referring to the events which he heard in the wheelhouse. He was in the same wheelhouse with you?—A. That's right.

Q. If he heard something, you would have heard it, you would be, were in the same place where you could have heard it?—A. Yes, sir; I always did hear them bells.

Q. Now Question 146, you said you heard the two bells up forward which you assumed to be your lookout giving a report of the ships ahead. Exactly what did those two bells indicate to you?

Answer, That there was objects sighted on the port hand somewhere.

147, Did the mate on watch give any indication of having heard those two bells? Yes, he picked up his glasses and looked to the port.

Now do you remember doing that?—A. Yes, sir; I picked up the glass, the binoculars, [823] seven-fifty binoculars, and what he meant by looking through the port, through the port side, through the port wing of the bridge, I observed that light and kept a close watch on it.

Q. That was the light on your port hand?—A. Yes, sir; that certain one.

Q. Now——A. It was more than one light on the port hand, but that certain one I was watching closely.

Q. How close was that light on your port hand?—A. I don't know, sir.

Q. What color was it?—A. When I first sighted it, it was white and then I saw his green light.

Q. Now what did this indicate to you?—A. That he was coming across my red port bow.

Q. Could you see his other white light?—A. I could see two white lights, his range light and the masthead light and his green light eventually.

Q. Was he opened it, was it——A. I don't understand what you mean.

Q. Was the range opening across your bow or was it closing across your bow?—A. The range, he was slightly opened.

Q. How close did that light come to you?—A. I did not try to indicate the distance he was. I saw [824] that he wasn't going to give me no right-of-way and time enough that I thought that my experience out there, thought was time enough to prevent a collision, so I went to the left, give him the right-of-way, and when he was well clear to my starboard side, I come back on my course.

Q. Well, now it is that change of course that I am interested in. Was this light which you saw within two miles of you?—A. I don't know, sir.

Q. Well, you're customarily used to judging distance at sea, are you not?—A. Yes, sir.

Q. Well, is this a matter which was within your professional competence?—A. Yes, sir.

Q. Well, could you give us your best professional estimate about how close he came?—A. Well, sir, you could see a colored light approximately two to three miles at that time, and a clear night, which was clear, and a dark night, but then there was also other white lights on the port side and the starboard side that I was keeping in mind and watching closely. And that fellow didn't seem to, that certain light didn't seem to want to go astern of me, so I give him the right-of-way to keep clear of him and then from then on, after he was clear of me, I watched the [825] other lights.

Q. Now at that time you were the privileged vessel, were you not?—A. Yes, sir; but there is a general prudential rules, in the rules that says to keep clear and prevent all collisions, and that is what I tried to do.

Q. Well, now, how far left did you come when you made your change to left?—A. I asked the quartermaster did he see that white light, and he said, "Yes," I says, "put her on your starboard side of your mast and keep her there."

Q. Now do you know how many degrees he had to change to do that?—A. Well, it was approximately, it could have been twenty-five, thirty degrees.

* * * * *

[827] Q. Now do you know how long you were on that course?—A. No, sir; I don't.

Q. Now Mr. Caldwell testified at 115, And how long after that twenty degree change of course to the left was it before you returned back to your course of nine? And his answer was, After the change to the left, I believe it must have been, well, maybe ten minutes, but no, I don't remember whether it was twenty degrees or what it was. I mean, I mean, I don't mean to imply that it was twenty degrees definitely. I don't remember. Now as far as I can understand that answer he says it might have been ten minutes. Now how does that accord with your recollection?—A. Well, it could have been ten minutes, but it could have been more or less.

Q. Well now, could it have been fifteen minutes?—A. I don't know, sir. I told you I didn't know because I didn't watch the clock. I just give it time enough to clear my ship fairly well to the starboard and I considered that fair enough.

Q. Now do you know what time it was that you steadied [828] on your base course of zero zero nine

by ship's gyro?—A. No, sir; I don't know. It was sometime around, after one-fifteen.

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Q. Did you blow a whistle when you had made your change in course?—A. Which change do you mean?

Q. This is the change of course to the left twenty degrees or more.—A. No, sir; I did not.

Q. Did you wake the Captain when you changed the course twenty degrees left?—A. No, sir; it is not compulsory to wake the Captain to do things like that. He's got it in his night orders to keep clear of traffic as well as we could, and if we are in doubt, to call him, and I was not in doubt in my mind at all.

Q. Now at some time that you haven't been able to specify, you returned to your base course?—A. I can't hear you, sir.

Q. I am sorry. At some time which you haven't been able to specify, you returned to your base course at zero zero nine. Now in between that time and the time when your made your next change of course, which was to the right, did you receive any reports from your lookouts?—[829] A. Repeat that question, sir.

Mr. McGovern. Would you read it?

(The reporter read the question.)

The Witness. Preceding that I did several times.

By Mr. McGovern:

Q. What reports were they, of lights?—A. Ships on the starboard side, sir.

Q. Now did you yourself look at these ships on the starboard side?—A. Yes, sir; with my naked eye and with binoculars and also checked in the radar.

Q. That's what I wanted to find out. Now let us get your first check of the ships on the starboard side which you made with your, whichever you did first,

whether you did it with the radar or your naked eye, or the binoculars—what was the first time you checked the ships at the starboard?—A. Well, as I recall I have told you that I sighted lights all along my starboard side during that night, and I checked with my eye, either with my glasses, the binoculars, and eventually at times I would glance in the radar to see if anything was coming within a danger zone which I considered five miles.

Q. Now what scale was your radar on?—[830] A. It was on a fifteen-mile scale, sir.

Q. Now how many PIPs were showing on your radar?—A. I did not count them. There were quite a few, and they were all moving from ahead of me to my right, going astern of me, and there was never inside of five miles or five and a half to six miles, inside of those permanent markers on the radar, and I did not count them, sir.

Q. Well, now where were you standing when you directed the course change to the right?—A. I was standing, that was the second change—I mean the second, not a change of course—it is an after course.

Q. All right. The second after course. The first one you altered to the left to let this man who was the burdened vessel by?—A. That's right.

Q. Now the next time you changed course to the right?—A. That's right.

Q. Now it's that second that I am interested in now.—A. Well, I was standing close to the center porthole.

Q. And what did you see through the center porthole?—A. Well, I saw two red lights, almost ahead. One appeared very much closer than the other, with the same plane, and the other a little bit more on the right and further away, almost dead ahead.

Q. Was that the first time when you yourself saw these [831] red lights?—A. Colored lights; yes, sir, with the exception of that one green receding there.

Q. You saw this through the glass of the porthole?—A. I saw the red lights through the glass of the porthole with the binoculars and with my eyesight too.

Q. Now when was the last time you had been out on the open wing of the bridge before this time?—A. Well, sir, I couldn't account for that because I walked clean across the ship, back and forth; while I'm on watch continuously, and I don't very seldom stop to one certain place and stay there. We move about all the time.

Q. But you had not sighted these lights when you were on the open bridge, the colored lights?—A. I did not see those two red lights before. I told you I did while I was standing right in the middle of that porthole.

Q. Now what, if anything, did you say to the helmsman at that time?—A. I told him to right a little.

Q. Now what did you mean by that, or what did he understand you to mean by that?—A. Well, he brought the ship to the right. He asked me, you mean by the compass. I said, I told him to right a little, and he asked me something concerning how many degrees, [832] or so, and I said, "What are you on now?" He did right and then I says, "What are you on now?" He says, "Twenty-three." I says, "Well, that's good enough. Hold'er there steady as she goes." And I kept asking him, "What are you on now?" because when you're steering a ship by hand, it sways back and forth slightly and I wanted to know what he was on and he kept telling me twenty-three, twenty-three. I said, "Very well."

Q. Now how close did the lights appear to you to be when you first saw them through the glass port-hole?—A. They appeared very close.

Q. Within a mile?—A. I don't know, sir.

Q. Within a half a mile?—A. I don't know, sir.

Q. Within a quarter of a mile?—A. I still don't know. I couldn't tell you how close those lights were. They appeared very close.

Q. I am trying for our assistance to find out within two hundred yards.—A. Well, sir, the lights was dead ahead and they appeared close to me, being on a dark night when they first popped out like that, they appeared close to me, and I don't know what distance they were away from me.

Q. You did not make any estimates?—A. No, sir; I didn't try to. I give them the right-of-[833] way.

Q. Now, did you blow any whistle when you changed course to the right?—A. No, sir; I did not. I didn't change course to the right. I altered course to the right.

Q. You altered course?—A. That's right.

Q. From zero zero nine to 0 two three?—A. That's what we call visual navigation.

Q. Did you call the Captain when you made that change of course?—A. No, sir; I did not.

Q. What time was it that you made that change?—A. Sir?

Q. What time was it you saw these two red lights and made that change?

* * * * *

[834] Q. Now how long did you remain on that course of o two threg by gyro?—A. Well, sir, assuming that the accident occurred approximately at zero two-thirteen, I would say anywheres from seven to twelve minutes.

Q. Now did you make any further change of course before the collision?—A. I never did change course. I altered courses.

Q. Oh, all right. You make any further alterations of course before the collision?—A. Before what?

Q. Before the collision?—A. No, sir.

Q. Didn't you change course to the left?—A. No, sir; I didn't change course.

Q. Did you alter course to the left?—A. Yes, slightly. I started to my left.

Q. When did you alter course to the left?—A. When I saw the third red light.

Q. Which was how long before the collision?—A. Approximately thirty seconds.

Q. Now where were you standing when you saw the third red light?—A. In the same place, in that porthole.

[835] Q. Looking through the glass porthole?—A. Yes, sir.

Q. Now where had you spent the intervening time between seeing the first two red lights and the last third red light, which was the light of the vessel with which you collided?—A. Well, at the usual place there where you would stand when you're doing visual navigation, right close to the quartermaster where you can observe the different bearings at different angles and also give orders to the wheel.

Q. You stated you stayed in the wheelhouse then?—A. Yes, sir.

Q. You did not go out to the wing of the bridge?—A. Before the collision?

Q. That's right.—A. You mean—what do you mean?

Q. Did you go to the open wing of the bridge in between the time?

The Court. We cannot hear you.

By Mr. McGOVERN:

Q. Did you go to the open wing of the bridge in between the time that you saw the first two red lights, the one you saw through the glass porthole and the last red light which was the red light just before the collision?—A. I don't recall going on the wing of the bridge during that short period. I was standing there taking up, [836] observing the bearings on the lights and giving orders to the quartermaster.

Q. What time was it that you saw the third red light?—A. Well, I think it was approximately, it could have been at zero two eleven and a half, or zero two eleven, something like that. I already told you from seven to twelve minutes before the collision.

Q. Now you saw the first pair of red lights about between two and five minutes after two; is that correct?—A. No, sir; I did not see a pair of red lights. I saw two individual lights.

Q. I am sorry. You saw two individual red lights between two and five minutes after two; is that correct?—A. Yes, sir.

Q. And then you stayed in the same place or approximately in the same place, and next saw one red light about a minute or less than a minute before the collision?—A. Less than a minute before the collision. That's right.

Q. Now during this period of time had you been receiving any reports from your lookouts?—A. Yes, sir.

Q. What were the reports which you were receiving from your lookout?—A. Reporting bells, lights.

[837] Q. What bells were they?—A. There were some for the port and some for the starboard because there was vessels on both sides of us.

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By Mr. McGOVERN:

Q. Mr. Mate, I am reading from Upton's Coast Guard testimony at Question 405, and the question is, When was the last time before the collision that you had any bell signals indicating ships on your port side, if you had any? And the answer, Well, I'd say something around one-fifteen.

406 Question, That is the last time you recall seeing any ships on your port side or ringing a bell for ships on your port side? Answer, Yes, sir.

Now is that a correct report?—A. That could be correct; yes, sir, but I couldn't see them. I could—I was up higher than he was and I could see some white lights quite a ways off on the port side, sir.

Q. But as far as your lookout was concerned from one-fifteen on, reported only lights on the starboard side?—A. I don't know what he saw. I know what I saw, sir.

Q. I am asking what he reported to you [838].—A. I don't remember what he reported. I recall him reporting ships on both sides, more of them on the starboard side.

Q. Now I go back to his testimony, and the question is 286. This ship you say that you saw at about two A. M., about three points off the starboard bow, you gave one bell. This was the same ship, are you certain, that you had again reported a few minutes later?—A. I reported the same light twice.

Q. That you reported the first about two A. M.?—A. It was something a few minutes before.

Q. A little before two you reported it the first time and that's when she was off your starboard bow?—A. Yes, sir.

Q. Then a few minutes later you reported the second light, or you reported this same light a second time?—A. Yes, sir.

Q. Do you remember how many minutes there were in that interval?—A. I'd say around ten minutes.

Q. And then from the time that you reported a second time about how long was it until you began to ring the bells as fast as you could as she was coming in on you?—A. Well, it was when I could just see the bow of this ship.

Now did you receive these reports by bell from Mr. Upton, the bow lookout?—A. I received bells on the starboard bow by Mr. Upton, [839] but which one he was referring to when he was ringing the bell, I do not know, sir. I could see much more lights than he could on the starboard side, and I do not know which individual light he was referring to when he kept reporting, he claims, the same lights all the time because there were many white lights on the starboard side, sir.

* * * * * *

Q. Then we go to the third alteration of course which was to your left. Now did you blow a whistle when you changed course to your left, altered course to your left?—A. Sir, I was going approximately zero twenty-three when I saw the third red light, before I saw that third red light which was very close on my starboard side when I did see it. I was on course zero zero twenty-three, shortly after I looked on my port bow, and I saw that the two red lights that had passed from my starboard to my port was well clear, I [840] started back. I gave an order to come back on the course and at that moment I saw that third red light popped over real close to my starboard bow at a terrific speed. I said then hard left and I run to the port wing of the bridge. I sounded two blasts of the whistle followed by several short blasts, and hollered the second time, Hard left, and he then told me,

"She's hard left." And that's when the collision occurred, sir.

Q. Now, sir, there is only one other matter that I will take your time up with and that is your radar. When was the last time that you looked in the radar-scope before the collision with reference to the three points that we have been examining you on?—A. Well, I would say shortly before four bells in the wheelhouse, or two o'clock.

Q. Just before two o'clock?—A. Shortly before two o'clock.

Q. Now what was the situation as shown in your planned position indicator at that time?—A. I didn't understand the question, sir.

Q. What was the situation shown on your scope? You had a P. P. I. scope on your radar?—A. Yes, sir; that's right.

Q. What was the situation shown on your P. P. I. scope?—A. There was targets way off on the port side and there [841] was several targets well off on the starboard side, all moving towards my stern respectively.

Q. How near was the closest target?—A. The closest target was well abaft my beam and it was approximately five and a half to six miles off.

Q. Now how close was the nearest target which was forward of your beam on the starboard side?—A. I'd say well over six miles.

Q. Now do you have any explanation of why your radar didn't pick up the *Ruchamkin*?—A. I don't have any explanation; no, sir.

Q. How was your sea return; were you having any?—A. Very, very little on fifteen-mile scale because there was no sea.

Q. And there was no ships really close to you to show it on your scope?—A. I already stated, sir, that

there wasn't anything within five and a half to six miles, was the closest one, sir.

Q. I was only asking that with respect to the sea which is turned up by a nearby vessel.—A. Well, I couldn't see any in there; no, sir.

Cross-examination by Mr. O'Connell:

Q. Mr. Riche, at any time prior to the collision did you have any reason to believe that the ships off on your [842] starboard were naval ships?—A. No, sir.

Q. You had no knowledge by visual signals or anything like that that the ships over there might be naval ships?—A. No, sir. I don't see where anybody could tell a naval ship at nighttime from a merchant ship when they all carry the same lights, or supposed to. I don't know any reason why I should know it, it was a naval ship.

Q. Any time after o two o o, after two o'clock, do you remember whether you received any sort of a signal light, a blinking signal light off to your starboard?—A. Yes, sir.

Q. You noticed a blinking signal?—A. Yes, sir.

Q. And where did you think that came from?—A. I was standing at the moment that I saw that blinking signal light approximately in the middle of the wheelhouse glancing over to my starboard through the starboard porthole well abaft my beam. I saw a blinking light sending a message, AAA, which means attention.

Q. And from what type of a ship did you imagine that came from?—A. I don't know, sir. It was very dark. All I could see was the side of the light that was blinking.

Q. You just saw the side of the lights?—[843] A. The side of it. It would seem like to me it was

pointed in another direction, but I thought they probably meant me so I plugged in my porthole key and answered him three or four times and he didn't respond so I took it for granted he was talking to someone else.

* * * * *

Q. All right. Now when you blinked back were you in the wheelhouse?—A. No, sir.

Q. Where were you blinking back; where were you standing?—A. I was to the starboard wing of the bridge.

Q. Starboard wing?—A. Yes, sir.

Q. Could you see from what, as you stood on the starboard wing, could you see what direction this AAA came from?—[844] A. Well, it seemed to me it was coming from abaft my beam from some ship. I don't know which ship it was, or who it was because he never did answer me and I just dismissed it, as he wasn't talking to me. So I didn't pay any more attention to it.

Q. At the time you received this blinking AAA, you thought it was, they were trying to get your attention?—A. Well, they could have been; yes, sir.

Q. Right, and you attempted to signal back by this means of this blinker?—A. I intended to answer him.

Q. What type of a signal, what was the signal that you gave back?—[845] A. I answered with AA.

Q. You gave them AA?—A. That's right, several times.

Q. And you didn't get any response to that?—A. That's right.

Q. Now how long a time was consumed in this receiving the signal or blinking back?—A. Well, I don't know how long he signaled after that because I didn't pay any more attention, but I would say I took approximately fifteen to twenty seconds, something

like that. I decided he didn't answer me and I took it for granted he wasn't talking to me. He meant somebody else.

* * * * *

[846] Q. Total time you used up was fifteen seconds?—A. I didn't say fifteen.

Q. Approximately?—A. Approximately.

Q. Approximately. You waited twelve more seconds before you went back to the wheelhouse?—A. Well, sir, I was concerned with the ships ahead. I mean on my port and starboard side and I was watching bearings on them to see, make sure that they were always changing to my [847] right and my left so there would be no danger of them wanting to cross my bow and I didn't take more time than I could afford on account of that.

Q. But that blinking light, you didn't get the impression it was from a Navy ship?—A. Certainly not, because we talked to merchant ships all the time.

The Court. What was the bearing of that blinker?

The Witness. It was approximately a point and a half to two points abaft my beam. I glanced when I first saw it, it was through my starboard porthole, Your Honor.

The Court. Approximately what was the range of it?

The Witness. Well, I would say maybe it could have been six miles off.

The Court. And did you fix the time?

The Witness. No, sir; I did not, sir, because it's dark in the wheelhouse and I didn't notice any time at all, being he didn't answer, I didn't.

The Court. Was it after you had seen the two red lights dead ahead?

The Witness. No, sir; it was quite a bit [848] previous to that, sir.

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[858] Cross-examination by Mr. McGOVERN:

I think that would be good. You can put the underlined copy.

Now, Your Honor, we have one matter. It was clear from the examination of the last witness that if you want to use that machine which has been introduced over my objection, you have to have a porthole of the type which he looked through in order to look through it.—Now, I don't believe that you have your porthole available. Do you have a glass port available of the kind that the witness——

The COURT. I think that would go to the weight of the testimony. All this display is offered for is just what the witness has explained. Now, of course, whether or not those lights were seen, whether the distance was such as the binoculars or with the naked eye you can see the colored lights, all that will be taken into consideration.

Mr. McGOVERN. I just don't want to be in the position where I can produce a standard glass porthole——

[859] The COURT. I understand your position, that the mate was looking through what you described as a thick porthole glass.

Mr. McGOVERN. Yes, sir. Thank you.

Excerpts From the Testimony of John D. Cain, a Witness for the Texas Company

[656] Direct examination by Mr. BRUSH:

Q. Captain, how old are you?—A. Forty-six.

[657] Q. And what is your occupation?—A. I am master of the Texas Company ship, the *South Carolina*.

Q. Will you speak up so that they can all hear you.—A. I say I am master of the Texas Company ship, the *South Carolina*, presently assigned.

Q. Do you have a license of any kind?—A. Yes, sir; I do.

Q. What license do you have?—A. Unlimited master's license.

Q. And how long have you had it?—A. My original license was issued in 1939. I now have a fourth issue.

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[658] Q. In November 1952, were you master of the tanker *Washington*?—A. I was.

* * * * *

Q. Were you master of the *Washington* on the night of November 13–14, when she had the collision with the U. S. S. *Ruchamkin*?—A. I was.

* * * * *

[663] Q. On the night of this collision were you up and around when it occurred?—A. No, sir; I wasn't.

Q. Where were you?—A. I was asleep.

Q. Do you recall now what time you turned in?—A. About ten-thirty P. M. The evening before the collision.

* * * * *

[664] Q. What was the first knowledge you had of this [665] collision?—A. Well, I was awakened by a series of blasts on the whistle which I interpreted to be for my ship, from our ship.

Q. Will you tell us what you did, where you went, and what you observed in that time?—A. Well, on hearing these whistles, I got up and before I got out of my cabin, I heard it, I felt this collision, the ship jarring something. I went straight to the wheelhouse and from there on out to the wing of the bridge. When I got in the wheelhouse, why, I asked Mr. Riche what had happened and he told me that fellow had hit him. I also learned that he was going full astern with a hard left rudder. Not stopping I went

on out to the port wing of the bridge, and that is the first I saw of this red light that was on our starboard bows close by. In fact, the ship had already collided with this vessel.

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[673] Cross-examination by Mr. McGovern:

Q. Captain, you sailed during the war?—A. Yes, sir.

Q. Sailing in convoy?—A. About half of the war I did convoy.

Q. Now I am looking at your night order book, and I am looking at the standing orders. I want to call your attention—you have Order One, Obey all rules of the road, having an especial regard for the general prudential rule and the precautionary rule. Was that a standing order of your ship?—A. Yes, sir; it was.

Q. Two. Give all vessels a wide birth? Now what's that mean to a layman?—A. That merely is a caution to safe navigation.

Q. Was that a standing rule of your ship?—A. Yes, sir.

Q. Three. Do not hesitate to alter or reverse course to avoid immediate danger. Was that a standing rule of your ship?—A. Yes, sir.

Q. Four. Do not hesitate to call me at any time you [674] are in doubt. Was that a standing rule of your ship?—A. Yes, sir; it was.

Q. Was it actually complied with in your ship?—A. As far as I know. If I wasn't called I would never know if the man was in doubt.

Q. No, but were there occasions on which you were in fact called?—A. Yes, sir. Oh, yes, sir; that's right.

Q. It's not just a paper rule. It was a real rule? A. No, was a real rule.

Q. Five. Check all courses and feel free to make use of all facilities for determining the vessel's position in maintaining safety. Let me know when courses given or action taken does not seem proper or would seem to stand the vessel in danger.—A. That's right.

Q. Six. When visibility becomes poor start radar, reduce speed and call me.—A. That's correct.

Q. Was that complied with in fact?—A. Yes, sir.

Q. Seven. Check compasses frequently. Does that comply?—A. Yes, sir.

[675] Q. Eight. Keep an alert watch and see the lookouts and helmsmen are alert. Was that complied with on your ship?—A. As far as I know; yes.

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[676] Q. Then you had a particular night order book which has particular dates on it. Now the last entry here has got a—it says, course zero zero nine; says, observe standing orders, keep a sharp watch for cross traffic and fishing vessels. Call me at six A. M., and it appears to be signed by you; is that correct?—A. That's right. That is my signature.

Q. When did you write that up?—A. I wrote that just prior to ten-thirty the evening before.

Q. That's what I wanted. You notice there is a change in the date?—A. I see the entry before that was at of the 12th and this was marked the 12th and marked over it, 13th. It should have been the 13th.

Q. Should have been?—A. Yes, sir; I changed that before Mr. Williams signed it.

Q. Now the other thing I wanted to ask you about, is the course—that course zero zero nine, where would that course have been from?—A. That course would have been from a little over four miles. I don't recall. A fraction, but it's a little [677] between four and five miles east of this target buoy that we had passed.

I believe, and eight forty-eight the evening before, somewheres on the eight to twelve watch. I think about eight forty-eight that we passed that buoy.

Q. Was that zero zero nine your gyrocompass course, or your true course?—A. That was the gyro.

Q. What was your true course?—A. Our true course was zero zero seven and a half. We had about one and a half degrees——

Q. That's a constant error on the gyro?—A. Yes. It was, as far as I remember during the trip, it was—we allowed that and made our courses good.

Q. Did you have any other troubles with the gyrocompass during that point?—A. No, sir.

Q. Now had you been running with a one and a half degree error in your gyrocompass for some time on a previous trip?—A. I couldn't recall for sure. I'd have to inspect the book to see what her error had been.

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[680] Q. Well now, if your watch officer had obeyed your standing orders and changed course from the course of zero zero nine, would your standing orders have required the watch officer to wake you up and tell you about it?—A. Traffic maneuvering; no, sir. They don't have to call me unless they are in doubt about it.

Q. Well, now, what's the difference between traffic maneuvering and changing your course?—A. Well, changing of courses, when you lay down another [681] track to follow, you intend to follow it.

Q. Well, now, you know, Captain, your mate changed course twice in this watch, don't you? You found out later he changed course twice?—A. I wouldn't recall any course change. I recall the maneuvering.

Q. What was the first change you made?—A. I didn't know at the time what course he had changed to. I learned later, that, listening to the testimony and so forth, that he had changed over somewhere about twenty or twenty-three, something like that. I couldn't go over his testimony——

Q. Zero twenty-five, nine, or twenty-three.—A. I couldn't go over his testimony?

Q. I just wanted while you're on the stand, we have to take you as you come along, and not after the other people, so I am not anticipating—I am just giving you your explanation now. This change of course, zero zero nine to zero two three was not sufficient change of course so that he should have told you about it; is that your position?—A. I still don't call it a course change, sir.

Q. Well, alteration of helm then. You tell me what it is, if it's not a change of course.—A. It's a traffic maneuver.

Q. What traffic did he maneuver for?—[682] A. Well, he didn't tell me. I didn't know anything about it at the time.

Q. All right. Now I get to the same question another way. Let us assume he's making a maneuver at this time to course zero two three, so we don't argue about courses, steering zero zero nine, 0 two three, and he makes this change for the purpose of what you call traffic. Now you're in International Rules waters. Now is it not a fact that under the International Rules he would have to blow a one-blast course signal when he changed his course?—A. I believe it says that; yes, sir.

Q. You believe that is the rule?—A. Yes.

Q. Now if he had blown a one-blast course signal, would you have heard it?—A. I imagine I would have.

Q. And you would have awakened?—A. (Nodded.)

Q. They can't take you in just nods of your head. You have to say.—A. Yes, sir; it would have woke me up.

Q. Now you also know from listening to the other testimony that your mate made a second change of course?—A. That's right.

Q. Now where was the second change of helm, from what [683] to what?—A. I believe he went hard, came back to the base course and then later on went hard left from the testimony that I heard.

Q. Now at that time was that a change of what you call course or a traffic change?—A. Well, it would be going back to the base course before he went hard left.

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Q. Now did he blow any signal at that time?—A. I don't believe he did. I didn't hear any.

Q. If he had blown one, would it have awakened you?—[684] A. I imagine it would.

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[686] Q. What were your instructions, or the Texas Company instructions to watch officers about standing a watch? Do you have any instructions about being out in the open bridge?—[687] A. No, sir; we don't have any particular instructions about it.

Q. You have any particular customs about having your mates on the open bridge?—A. No, sir; I don't.

Q. Well, now, what instructions do you have on your ship about smoking?—A. No special instructions; no, sir.

Q. Now what instructions do they have in your ship with respect to the physical condition of your crew?—A. I don't know if I understand what you mean there.

Q. Well, now, Captain, I show you a little booklet called Rules and Regulations for Tank Vessels, issued by the Coast Guard, and I'm referring first to the section in here about smoking, which is Section 35.30-5, and then——A. Well, that question you asked me about instructions about smoking, we don't smoke outside on the open deck.

Q. That's what——A. I thought you meant were they permitted to smoke on watch, which we didn't.

Q. Your read the regulation?—A. Yes.

Q. Your men were not permitted to smoke on the open decks?—A. No, sir.

[688] Q. Now were your mates permitted to smoke on the open bridge?—A. No, sir.

Q. Were your mates——A. Wasn't their practice.

Q. Were your mates permitted to smoke in the wheelhouse?—A. Yes, sir.

Q. Were the doors of the open bridge closed or were the doors to the open bridge open?—A. They were open that night.

Q. Well, I am interested in what the smoking regulations are.—A. Well, they—cool weather there they may close the weather door occasionally.

Q. What kind of petroleum products were you carrying—you can keep that—on the night of this collision?—A. Well, in our forward group of tanks we had Diesel, and in the after group there we had what I learned later they designated as premium, was a Cities Service product we had loaded in Lake Charles, high-test gas.

Q. You were an inflammable ship then in the after parts?—A. Yes, sir.

Q. Now let us get back to the smoking on the ship with high-test gas. Did Mr. Riche smoke?—A. Yes, sir; he smokes.

[689] Q. Would he have been permitted to smoke on the open part of the bridge?—A. Well, I don't think he would. If I'd have saw him out there I'd probably cautioned him about it.

Q. Would he have been permitted to smoke inside the wheelhouse?—A. Yes, sir.

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[691] Q. Now you gave Mr. Riche a sedative after the accident, did you not?—A. I did.

Q. When did you give it to him, and what did you give?—A. I believe it was a phenobarbital tablet I gave to him afterwards because his nerves was quite upset. It was a shock to be in an accident like that, and the human act on my part to try to get the man quieted down where he could rest.

Q. How were his nerves, and previously? You see, you have not told us about his nerves being in a bad way. Now when did you determine he was in a condition where he needed phenobarbital?—A. I don't know that he needed it.

Q. Well, you prescribed it for him; you gave it?—A. It was after the collision.

Q. How long after the collision?—A. Well, I didn't time it right at the time. It was after we got away from the scene of the accident and I got time to take care of that.

Q. Now what were the actions of Mr. Riche which led you [692] to believe that he needed a sedative?—A. Well, there were no actions there, but I imagine most anybody gets involved in something like that, their nerves would be quite upset.

* * * * *

[694] Q. Now you were here Captain Rice from the Hydrographic Service testified?—A. Yes, sir.

Q. Now you remember his testimony about the Hydrographic broadcast, the one that goes out at six-

teen thirty, Greenwich, would be eleven thirty A. M. our time?—A. Yes, sir; I remember that.

Q. Well, now, did you direct your radio operator to listen to the Hydrographic broadcast?—A. I didn't direct him to listen to the Navy broadcasting station.

Q. That is the NNS?—A. NNS, I guess it is. I am not sure.

Q. What station did you direct him to listen to?—A. I didn't direct him to listen to any one particular station, so long as he took care of the traffic and got me the information that I thought I should have, why, that was how he got it. What station he got it from wasn't too much of a concern of mine.

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[697] Q. Now, Captain, I show you this Coast Guard accident report which is on Form 2692, Government's 31. I ask you if that is your signature?—A. That's right.

Q. Now I call your attention to the fact that this is dated up here the 15th of November 1952.—A. That's right.

* * * * *

[698] Q. I call your attention to the statement made down here where it says, Cause of the casualty and it says, USN navigation without lights.—A. We—that is my statement all right, but the information I got was headlines in the paper that somebody had handed me that morning when we arrived, and I would assume that that release was given by the Navy to the press, probably public relations. Maybe someday I will learn not to rely on the things I see in the papers.

Q. Well now, Captain, I understand that you have been questioned about this press statement before, and I don't want to unnecessarily press you on it, but my concern is merely that this statement that the

Navy was running without lights was made by you in a report.—A. I understand that that was erroneous on my part, but I was led to believe that through what I saw in the papers there, and I assumed that it was released from the Navy.

* * * * *

[699] Q. Now, Captain, you remember during the Coast Guard investigation you were asked about a report in the Philadelphia papers? Do you remember that?—A. Yes, sir.

* * * * *

Q. Now the next question is, Where did you receive the information that this Navy flotilla was traveling without [700] lights? Your answer, The first I actually knew for certain what had happened, I was in the dark as much as a lot of other people who wondered what happened there, but had they been carrying lights, we would have seen them; they wouldn't have enveloped us that quickly without any forewarning to us. Now, Captain, is that a correct report of what you said at the time?—A. Yes, it is.

Mr. McGOVERN. Your Honor, I understand that—I don't in any way want to question the Court's ruling and I'm not here to reargue a point that has been decided against me on discovery, but I am concerned lest when I get to another court, contention is made that at this point I should have demanded the Captain's statement to Mr. Brush and made some exceptions to it. Now I don't want to disturb the surroundings in any way——

The COURT. Well, it is in the record that you did ask for it and that your objection runs through the case.

Mr. McGOVERN. I just wanted to make sure. Mr. Brush, is that agreeable with you?

Mr. BRUSH. Sure.

Mr. MCGOVERN. I see no sense in making useless demands, but I have been other places where [701] they say I should have done it.

The COURT. Suppose we take a break here.

Mr. Marshall, take a short recess.

* * * *

Cross-examination [719] by Mr. O'CONNELL:

Q. Captain, did you of your own knowledge have a report of the physical condition of your seamen as they came on board?—A. No, we just get a fit-for-duty slip, is all we get.

Q. Who does it, company, the office of the Texas Company certify or send these men down to you?—A. Well, they either—like I explained awhile ago—Dr. Tritoco and Dr. Wallace there in the Public Health Service, they work together. They only have the one Public Health Doctor, and if he's not in, they will refer it over to [720] Dr. Tritoco. Now which one examined him I don't know.

Q. I understand the Texas Company hires a physician who examines the men who are sent down to you for service on board the *Washington*?—A. That is right.

Q. Do you get a report of that?—A. We don't get a report. We just get a fit-for-duty slip. If he's sent down, he's marked fit for duty, and that is all we know about.

* * * *

Excerpts From Testimoney of Oscar Smith, a Witness for the Texas Company

[605] Direct examination by Mr. CRENSHAW:

Q. Commodore, would you please state your name and present address.—A. Oscar Smith, Commodore.

U. S. Navy, retired. Address, 108 69th Street, Virginia Beach, Virginia.

* * * * *

[606] Q. Now have you had experience on the staffs of officers who have commanded formations of vessels or screen formations of vessels?—A. I have had extensive experience on the staffs of such officers.

Q. Could you name some of the staffs on which you served, Commodore?—A. Merely name the officer under whom I served—Comander Battleship Division 3 flag Se. Commander Chief Asiatic Fleet, gunnery officer and fleet intelligence officer. Commander cruiser scouting force which indicates commander of the heavy cruiser, I was Operations Officer. On board the *Honolulu* I was in comand of the ship which was the flagship of the light cruisers, and at the special request of Admiral Kimmel who was the commander at the time, I joined his staff in an ex officio position as flag captain attending many conferences and other meetings. I was Deputy Chief of Staff Atlantic Fleet during the latter part of the war, and the day the war ended I became Chief of Staff.

Q. You speak of the——A. U. S. Atlantic Fleet.

Q. Which War?—A. World War II.

[607] Q. Now in staff experience have you served in screened naval formations?—A. Yes, sir.

* * * * *

[614] Q. Now, Commodore, there has been a crude sketch over here on the blackboard of a circular formation of heavy ships and four screening vessels out ahead. Have you seen formations somewhat similar to that at nighttime?—A. Similar; yes, sir.

Q. Now have you seen them from outside the formation, from approach in any direction?—A. Yes, sir.

[615] Q. Now do you have any difficulty recognizing

it as a formation from the navigational lights?—A. You do.

Q. Why is that, sir?—A. The distance between the main body and the screening vessels is so great and that is a primary reason. The secondary reason is that the main body has so many lights that it makes the screening vessels—well, sort of unimportant from your viewpoint.

Q. Now, Commodore, in this case, there has been testimony that these vessels and certain other vessels were all a part of a Task Group which has been designated as eighty-six point two under the command of an officer whose flagship was aboard—whose flagship was the U. S. S. *Fremont*. His name was Captain Day. Captain Day has also been referred to as the O. T. C. or Officer in Tactical Command. Additionally, we are told that there is a screen commander, and, of course, there are commanding officers of the various individual ships. Now would you outline briefly for us the authority and responsibilities that those various jobs or officers hold?—A. The Group Commander, the Task Group Commander is the officer who commands the entire formation. He probably—I don't know whether he did in this case or not—but he probably wrote the Operation Order. He could have, an Operation Order. I do not know that any such orders in [616] existence in this individual case you mentioned, but he could have written an Operation Order and if it were a large, important operation he would have done so.

Then in that order he would have detailed these—he had the power, he had the command authority—to delegate the duty of command of the main body to one officer. Normally he would assign that to himself or retain it in his own hand. He would delegate the authority to command the screen and control its tactics

to the senior officer of the ships in the screen, and he would be designated Screen Commander.

Now the individual ship. I am going to start from the bottom and work up as regards the Tactical Command. The individual ships which comprise these various ships have on board a Commanding Officer, who is the Tactical Commander of that ship at all times. By that I mean that he uses the facilities granted him by the Navy Department that are placed on that ship to navigate it, make it stop, to make it speed up, to make smoke, do any simple thing necessary for it to behave and do the tasks to which are assigned to it. But he has over him the Screen—I am assuming it will take a screening vessel—he would have over him a Screen Commander.

Now the Screen Commander also has tactical command over that ship. It looks like dual authority. Actually it isn't. The Tactical Command of the captain, when he is operating in a screen or in an—under another Tactical [617] Commander is merely restricted to the movements of his ship and screen guide movements are handed down to him by the senior officer who will tell him ships right, ship speed fifteen, take formation X, but the captain issues the order to the wheel on his own ship in order to accomplish these things, or the orders to the engine.

Similarly, over the Screen Commander you have the Officer in Tactical Command—designation I believe was originated because of the necessities of a formation having an officer specifically designated to have all authority over everything in that screen that dealt with the operations as distinct with the administrative functions, because frequently there will be a senior officer traveling in the formation who may have the, might be the Chief of Naval Operations—actually if the Chief of Naval Operations wished to

he could relieve all of those people from their commands and take over, but of course, he probably wouldn't, but, so they designate this man as officer in Tactical Command and he is charged with the responsibility over those.

So now we have a triple authority over the ship, but by having delegated his authority over the screen to the Screen Commander, you end up only with three. However, this does not change his authority to step in at any time and issue, override the Screen Commander, and issue a direct order, but it is bad naval ethics to do it.

[618] Q. Now——A. May I finish, because we haven't developed the Group Commander. The Group Commander may be, or may not be the same man. The Group Commander, once he has issued his Operation Order, assuming he is a different man, sits in his cabin or stays on the bridge, watches what goes on as far as the individual formation with which he is connected, but he may have other forces in this formation. He may have a unit doing this, or another unit doing that under the same group, and when they bear the same relationship to him that these other commanders do, while the fact that they are out of sight means nothing to him.

Q. Now would you say that these officers have a responsibility toward the unit that they command?—A. When you give a man command, an authority over a ship or man in the Navy when he accepts that command, he also accepts a double responsibility, a responsibility to use the forces entrusted to him to the best of his ability to carry out the orders received from higher authority, and he has the responsibility which is to safeguard, to keep informed and to bear in mind at all times the forces over whom he has taken command.

Q. Now, Commodore, in this particular instance the *Rachamkin* was one of the vessels assigned to the Task Group Commander and proceeded independently of the formation, which [619] we have sketched on the board, from the Hampton Roads area to Camp Pendleton, where it was to undergo some beach reconnaissance mission or pick up some people from the beach and then proceed out to sea and join the formation.

Now up until the time that she had reported to the Screen Commander under whose control or guidance would that vessel be?—A. Under the Commanding Officer, immediate Tactical Command.

Q. Now after she reported to the Screen Commander, which in this particular instance she did by phoning the Screen Commander on the radio telephone, and saying that she was ready to join the formation and she was then ordered to proceed to a position from which to take her station, she was told twice to expedite in doing that; now under whose control or guidance would that vessel be at that point or after that report?—A. The Screen Commander.

Q. Now would it make any difference to your answer, does it change your answer to know the fact that the Screen Commander ordered her not to take a specific station but to go to a point, an undesignated point from which to take her station?—A. None whatever.

Q. Now yesterday, Commodore Smith, I showed you a letter from the Chief of Naval Operations written to the [620] Judge Advocate General concerning the maneuvering doctrine with respect to a vessel in formation, and so forth. Do you recall that?—A. Yes, sir. I do.

Q. Was there anything in that letter that caused, would cause you to change the answer you gave as

to whether the *Ruchamkin* was under the tactical control of the Screen Commander after he reported?—A. No.

Q. And even though she was not given a direct station to go to by him?—A. No.

Q. Now, Commodore, suppose after the ship or at about the same time—no, it was after. Excuse me. After the vessel had reported to the Screen Commander she had sent an arrival report to the flagship, on which rode the Group Commander, and the O. T. C., which in this case was the same person, now what would be the effect with respect to the O. T. C. of the sending by that joining vessel of that message?—A. As O. T. C.?

Q. Yes, sir.—A. I don't quite understand. The message was directed to whom?

Q. The message is sent to the, I believe it was sent to ComPhibLant with information to Commander Task Group [621] Eighty-six point two and it was termed an arrival report, and the message was sent about ten minutes after the voice report to the screen. Now would that have any effect on the status of the joining vessel with respect to the O. T. C.?—A. If—I assume the O. T. C. was an addressee of the message, an addressee——

Q. That is our information.—A. Either information or action?

Q. Yes, sir.—A. And my answer is made assuming that the Commanding Officer who sent the message considered that as a report of his arrival with the formation.

Q. Well, now, would the report by the joining vessel to the Screen Commander about which we have formerly spoken, have any effect with respect to that joining vessel and the O. T. C.?—A. Puts him under the command of the O. T. C. also.

Q. So that regardless of the effect of the arrival message, the voice radio transmission to the Screen Commander is affected to place the joining vessel under the control of the O. T. C.?—A. It is, because he is then reporting to the officers of the Screen Commander to whom the O. T. C.'s command of that individual ship have been delegated, and when he comes under his authority, he must come under the authority of the officer [622] who is exercising tactical command over that officer.

* * * * *

[623] Q. Now, Commodore, as this vessel approaches the joining of the formation, or the physical proximity of the Tactical Commander of the O. T. C., and the O. T. C. inquires of the Screen Commander as to her location, and is informed that she's at a certain bearing and there is some conflict as to whether he was given a range, but the bearing was given, we know, now would you expect the interest of the O. T. C. to attach itself to this particular vessel at that time?—A. I would.

Q. Now, Commodore, there has been testimony to the fact that the *Ruchamkin* made a report, arrival report to the *Fremont,* but, as it was required to do by the pertinent instructions or Operation Order, but that information, some reason that particular message didn't reach the eyes of the particular officer to whom it was addressed until some time [624] after the collision. Now assuming that that vessel, that that message had been significant, in placing the *Ruchamkin* under the command of this particular vessel, would the fact that the officer, the O. T. C., himself, that he did not see the message, would that alter the situation with respect to the joining officer, the joining vessel?—A. No.

Q. Commodore, as you have been in your experience operating with the screen formations, have you had occasion to encounter merchant shipping with these formations?—A. Yes. Yes.

Q. How does the O. T. C. consider the situation with respect to the approach of unknown shipping or vessels that are not part of his formation and his formation?—A. May I ask for a clarification?

Q. Please do, sir.—A. Do you mean how did we eventually decide an O. T. C. should act, or do you mean how did we act at various times?

Q. Well, I would like, if you can, to give us the precedent, the principle that you developed in your experience with Admiral Laning.—A. If you please, I'd rather add also the experience——

Q. Whatever it is, sir.—A. It is the experience I have had. I can't separate the two and say this I learned here and that I learned there.

[625] Q. I don't mean to, just to restrict you to Admiral Laning.—A. It became principle, and it was one of the most difficult ones to arrive at, that a formation proceeding at sea with lights on, encountering a merchant vessel, should attempt to avoid the vessel regardless of rules of the road priorities and—now you must understand that all officers in Tactical Command would not agree with this, but this did become the established practice, and to my knowledge by those who were experienced at that time, was the best practice.

Q. Now—excuse me.—A. You would try to avoid. There were many arguments concerning this and every new officer assigned to take Tactical Commands, not having one before, when that was told him, would raise the objection about, Well, that will confuse the approaching ship, and the answer to that is that if the action is taken at the first opportunity and you

see the ship where you see some distance away, considerable distance away, it will not confuse him, but to let the ship, the merchant ship, who does not know that he is approaching a formation under one command, to whom it looks—and I have seen them, like a little fishing vessel here and fishing vessel there, and another one over here, and Atlantic City in the middle of it, if it's a big formation well lighted up—it just seems to be a thing not contemplated nor could it be contemplated by [626] the rules of the road because the formations are so different.

Then, so the answer to that objecting O. T. C. would be, if you do not or cannot move, change the course and speed of your formation because you think you should not, and you have the right-of-way by, according to—you are the privileged ships at that moment by rules of the road, then you should notify the stranger what you are—at least give him warning of what he is heading into, and thus help him avoid that. Then when they objected to that, or raised objections to it, the answer would come right back to it, if you know of a better way of doing it than avoiding it, you will have to tell me, and there were none that, speaking generally, could ever advance a better method of avoiding collisions at sea with approaching vessels.

Q. Now, Commodore Smith, are you familiar with Section zero seven five two, subparagraph "n"? Commodore Smith, are you familiar with the requirements of Navy Regulations concerning the duty of the Commanding Officer of any vessel in a formation to warn the Officer in Tactical Command of that formation and any endangered vessel of anything that might develop to endanger any vessel in the formation?—A. Yes.

Q. What do you take that to mean, sir?

Mr. McGovern. I object. It is a regulation. [627] It doesn't matter what the witness takes it to mean.

The Court. Suppose you ask him to demonstrate or illustrate?

By Mr. Crenshaw:

Q. Could you illustrate the operation or the execution of what the officers would do under that regulation, sir?—A. At the Point Hondo disaster when about five destroyers ran aground, the charges were brought, I believe, I think they made them parties to the Court of Inquiry—at least if they did not bring courts-martial charges against the Commanding Officers of all the ships in the formation because their navigation showed that they were running aground, that the Squadron Leader, when he gave a change of course was running them ashore, and I do not believe any of them sent a signal to him and told him, You are on the wrong course.

Q. Commodore, under that principle, would you expect if there were a ship in this position here, a stranger coming in this position, this vessel coming up in this position, could you expect one of the screening vessels, say, on the left-hand side of the formation to warn this naval vessel who was coming up to join the formation?—A. I'd expect the two screening vessels to whom he passed closest to notify the Screen Commander and O. T. C. because that is their assigned duty. They are on the screen for [628] the purpose of notifying of the approaching of anything of that nature.

Q. Now if they heard no warning issued to the individual vessels by the Screen Commander, would you expect them to warn that individual vessel?—A. I do not understand what individual—the ones, that is, over to the starboard?

Q. The *Corry*—if the *Corry* or the *Lloyd* had have seen the *Ruchamkin* or had haye known the *Ruchamkin* coming up here, when the *Washington*, coming down through the formation like that, would you have expected those two vessels to have warned the *Ruchamkin*?—A. No. I do not think they would.

Q. Would they merely relay their warning to the Screen Commander?—A. The danger to the *Ruchamkin* at that time, the moment that you have indicated was not imminent. They were notifying, they would be carrying out their orders, their duties, unless the Operations Order told them differently when they reported to the O. T. C., and the Screen Commander that a strange vessel had penetrated the screen.

* * * * *

[631] Q. Now, Commodore, you have spoken there of the responsibility of the O. T. C. to the vessel in the formation. Now in this particular case we have a screening ship, the *Ruchamkin*, which has—is not on station, but has been directed by the Screen Commander to proceed to a position [632] from which to take her station. Now what sort of a status would she be in?—A. She's under command of the Screen Commander. She's in the status, because she has reported to him and he has given her an order, therefore, she's in the status of a ship of the screen that is not in position or as they term it in the Navy, ship out of position.

Q. A ship out of position. And you have said that she's also under the Tactical Command of the O. T. C. at the same time?—A. She's under the Tactical Command of the O. T. C. because she's reported to the officer to whom he has delegated the command and that officer has received her as part of his command.

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[632] Cross-examination by Mr. McGOVERN:

[642] Q. Now let us get the question of who has the duty to take immediate action in a situation where the orders would appear to be putting a particular vessel into danger. Now who [643] can disobey the orders of the staff; the Deputy Chief of Staff or the Commanding Officers of the vessels to whom the order is directed?—A. The Chief of Staff himself never gives an order excepting to his own staff.

Q. His own staff. All right. Now the Officer in Tactical Command gives an order—say we get back to the Point Hondo situation—the order is transmitted from the O. T. C. to the Commander of the Screen. Now suppose the Commander of the Screen doesn't like that order. What are his powers as a naval officer in the chain of command?—A. He can protest to the officer who gives him the order.

Q. That's right, but can he disobey it?—A. If the situation is such that his Command is placed in jeopardy, he is required by all training that he can disobey it, and if he is wrong, he will stand the punishment for having done the wrong thing.

Q. Now we'll get——A. I make that clear?

Q. Yes, sir.—A. Any time that you disobey an order, you should protest first, and then if the order is insisted upon by your superior in command, you can stand by to higher counsel for the courts-martial.

[644] Q. Well, now let us get down to the Commanding Officer of the destroyers. Each Commanding Officer of the destroyer—what are his responsibilities with respect to the safe navigation of his vessel?—A. He is primarily charged with the safe navigation of his vessel.

Q. Do any of the responsibilities of the people above him relieve him of responsibility for the safe

navigation of his own command, of his vessel?—A. No.

Q. Now what are his duties with respect to receiving an order which he believes will place his vessel, every vessel in a position of danger?—A. Just what I have said. If the Commanding Officer—now again, question like that to be fairly answered must be properly qualified. If it's wartime he proceeds and carries out his orders. I assume you mean peacetime, the navigational danger?

Q. I mean Point Hondo, which is the one we are discussing, which is peacetime, 1924.—A. No, no question of wartime.

Q. No question of killing your troops because you get the wrong command?—A. If the Commanding Officer receives a navigational order which he conceives is putting his ship in danger through [645] which he cannot bring it successfully, he should, requires immediate action, he should take the immediate action, explain why afterwards.

* * * * *

Q. I show you the whole page which is from the U. S. Naval Regulations, of Navy Regulations, and it begins on seven five on, safe navigation * * *

* * * * *

[648] Q. The next paragraph, which is "o" says, When under the tactical command of a senior perform no independent evolution without orders from such senior except as necessary to avoid collision or imminent danger.

Now what do they mean there when they talk about Tactical Command of a senior?—A. They mean that the Tactical Commander has given him an order to do something and he should accomplish it and not go off on something of his own.

Q. Now, what is the exception in there for, except as necessary to avoid collision or imminent danger?—A. Well, because if they didn't, the Commanding Officers of these vessels would, running along, and run into anything they wished to and say it is his fault; I obeyed the Navy Regulation.

Q. The Regulation does not relieve the Commanding Officers of the duty to maneuver his own ship as necessary to avoid collision or imminent danger?—A. No.

Q. Fine. Let me get back here, and I am reading on the same article, and only this one is "j," small "j"——

* * * * *

[649] Q. "j" reads as follows: Observe every precaution prescribed by law to prevent collisions and other accidents on the high seas, inland waters, or in the air. Is that in the Regulation?—A. Yes, sir.

Q. Now is there anything in the Regulation which you hold in your hand which in any way purports to authorize any Commanding Officer of the United States Navy from failing to comply with the rules of the road?

Mr. CRENSHAW. I object to the question. I think he's obviously asked him to give an opinion on the effect of the entire volume of Navy Regulations, which was exactly the same objection he voiced earlier in which the Court ruled that the witness didn't have to do.

Mr. MCGOVERN. Your Honor——

The COURT. The question is whether he knows of any such provision.

Mr. MCGOVERN. That's right.

The COURT. I will let him answer.

[650] By Mr. McGOVERN:

Q. Sir, you may answer.—A. Will you repeat the question?

(The reporter read the last question.)

A. I don't know.

Mr. McGOVERN. No more questions.

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Excerpts From the Testimony of Lionel J. Foitier, a Witness for the Texas Company

[722] Direct examination by Mr. CRENSHAW:

Q. Mr. Foitier, what is your occupation?—A. I am a radio operator for the Texas Company.

[723] Q. And were you on the S. S. *Washington* on the night of November 13–14?—A. Yes, sir.

Q. 1952. And in what capacity were you serving aboard the *Washington* then, Mr. Foitier?—A. Radio operator.

* * * * *

Q. Now, Mr. Foiter, how many hours a day did you stand watch, or are you on duty in connection with your radio [724] operator's work on the merchantman?—A. Eight hours. Sometimes a little more, but never less than eight.

Q. Now that is eight out of the total twenty-four?—A. Yes, sir.

Q. Now were you standing those watches the eight-hour period on the trip from Atreco to Philadelphia in which this collision occurred?—A. Yes, sir.

Q. Now what stations or frequency do you guard on that watch?—A. Well, we got five hundred, of course, and all the commercial stations. We listen for messages from the company New York Office, Port Arthur Office or any branch office that may have occasion to send company messages to the ship, and

that is all the commercial stations on the East Coast and Gulf Coast too.

Q. Now do you tune in especially for messages such as the weather forecast or the Hydrographic messages, HydroLant's and things like that?—A. I tune in especial commercial stations for the weather.

Q. Does that come out at a certain time every day?—A. Yes, sir: it comes out ten-thirty in the morning.

Q. Ten-thirty in the morning? [725]—A. Yes, sir.

Q. Go on.—A. And five hundred you also hear general calls to ships from Coast Guard stations, Navy Stations, sending HydroLants and messages of that type.

Q. Is there a definite time for that sort of a message?—A. Yes, sir; there is.

Q. What time would that be, Mr. Foitier?—A. Call stations, you mean?

Q. Well, explain to me—were you here the other day when the Captain from the Coast Guard was testifying about the Station NNS, the Navy Station?—A. Yes.

Q. Was it a Navy Captain——

Mr. McGovern. No, he was a merchant captain.

By Mr. Crenshaw:

Q. The Captain testified about the radio communications. Were you here?—A. Yes, sir.

Q. Do you recall his reference to a station designated as NNS?—A. Yes, sir.

Q. Or Main Navy, something like that?—A. Yes, sir.

Q. Now did you guard that station? [726]—A. No, sir; I did not.

Q. On this particular trip you did not?—A. No, sir.

Q. Did you guard a station that put out the same information as that station?—A. Well, I guard the coastal stations, the Coast Guard Stations and Navy, normally repeat the messages that NNS sends out originally, as far as I know. That they must do because the messages they send are pertaining to Hydros and things of that type.

Q. To your knowledge that is customary in the various shipping companies to guard those coastal stations as Coast Guard Stations?—A. Oh, yes. That is quite definite with little exception. Ships coming in, into the states from offshore, from Europe, or Canal Zone, down Panama, they may, and I think they do guard that eleven-thirty schedule because the Hydros that are sent out there, that is the only way they can get them. They can't get them any other way, and if they are going into a certain port like Norfolk, or any different places on the Coast, that is the only way they will get any Hydros that pertain to that particular port and buoys have been moved, or things of that type for navigation.

Q. Well, now, as you proceeded up the Coast from Texas towards Philadelphia on this particular trip, were you guarding [727] Coast Stations and not the NNS?—A. Yes, sir; Coast Stations.

Q. Did that, to the best of your knowledge, give you complete coverage of that sort of message?—A. So far as I know; yes.

Q. Is that broadcast made once or twice a day, or at certain times?—A. From the Coastal Station?

Q. Yes, sir.—A. I think they are made more than twice. I am not sure because I don't hear them all the time. There is an awful lot of noise on five hundred, particularly on the Coast.

Q. Well, now, as you come up—there has been testimony by this Captain to whom we have referred—that

there is a broadcast at about eleven o'clock in the morning and one at night. Now—or eleven-thirty in the morning or another one at eleven-thirty at night. Now do you know whether those two messages send out the same information, or is that different information?—A. Generally they are the same and they may be an addition.

Q. Do you recall on your trip from Atreco towards Philadelphia receiving any HydroLants aboard concerning amphibious operations or naval maneuvers on the Virginia Capes?—A. No, sir; I do not.

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[729] Cross-examination by Mr. McGovern:

Q. Mr. Foitier, you testified before the Coast Guard up at Philadelphia?—A. Yes, sir; I did.

* * * * *

[730] Q. Well, now, did you testify at Philadelphia—this is Question 20:—A. Yes, sir; I did.

Q. Did you have any orders from the master of the *Washington* to listen for Hydrographic or Notice to Mariners broadcast? Do you remember that Question?—A. No, I don't remember the question.

Q. Well let me show it to you and show you your answer which was, No, sir, and ask you whether that correctly reports what you testified at that time.—A. It is No, sir, and the answer would have been No, sir, anyhow. I didn't know what you meant.

Q. Yes, sir. Now I call your attention to Question 47 which was, When was the last Hydrographic information received by you, and your answer at that time is—is that still your answer?—A. I don't think I received—I might qualify that. I am not sure. I don't believe I received one. I might have about something, maybe St. Johns River, some inlet, but I don't think I did.

* * * * *

Excerpts From the Testimony of E. Bradford Tazewell, Jr., a Witness for the Texas Company

[733] Direct examination by Mr. CRENSHAW:

Q. Would you state your name and address, please, sir?—[734] A. E. Bradford Tazewell, Jr., 207 49th Street, Virginia Beach, Virginia.

Q. Now, Mr. Tazewell, have you at my request prepared an exhibit, a part of which is here and another part of which consists of some cardboard strips and so forth?—A. Yes, sir; I have.

Q. Now will you tell me what you have done in the preparation of this exhibit? What information have you had and what have you done with the information that you have received?—A. Well, sir, the basic idea of the exhibit is a graphic portrayal of what the lights of the naval formation looked like at various times from the bridge of the S. S. *Washington*. This exhibit was prepared from information furnished me as follows:

First, I have the over-all dimensions of the ships, which I believe is from Answer 14 of the Request for Admission of Facts and Genuineness of Documents. Then I had the positions of the lights on these various ships there from the answers to the interrogatories.

Q. Now the answers to interrogatories and the requests for admission of facts—they are copies of pleadings in this litigation which I have furnished you?—A. Yes, sir.

Q. Go ahead.—A. The particular ships were covered, as follows:

[735] The *Lloyd*, *Hollis* and th *O'Hare* were taken from Answers to Interrogatories No. 8 addressed to each and every screening vessel including the *Ruchamkin*. The *Fremont*, *Glynn*, *Capricornus*, *San Marcos*, *New Kent*, *Hollis*, *O'Hare*, and *Lloyd* were taken from Answer No. 1 of interrogatory addressed to

each and every vessel of the formation, including the *Buchamkin*. The *Newport News* was taken from supplemental answer of respondent, United States of America, to interrogatories propounded by libelant. The *Corry*, I used the same figures as those of the *O'Hare* since the vessels are very similar.

After having this information in printed form, I checked them against photographs also furnished to me by Mr. Crenshaw.

Q. Those photographs to which you refer bore exhibit numbers which were part of the request for admission of facts and genuineness of documents; is that correct?—A. Yes, sir; I believe so. Yes, sir.

Q. Now, Mr. Tazewell, with that information, then you were able to determine the size of the ship and the position of the lights on that vessel?—A. Yes, sir.

Q. Both as distance from the bow and from the stern and lights above the water; is that correct?—A. Yes, sir.

Q. Then what did you do, Mr. Tazewell? [736]—A. Well, thirdly, I had to have the position of these ships. I got the positions of the *Fremont* and the *Washington* from Exhibit 22 which was produced at the Coast Guard hearing and on a maneuvering board I plotted the location of these two ships. They were as follows:

At o one five five the *Washington* was at a range of ninety-five hundred yards from the *Fremont* at a bearing of two hundred thirty-two and a half degrees, and at two o two, for the four hundred yard range at two hundred forty-two degrees. After plotting those two, I, from the answers to questions 9 and 10, of the request to admit, was able to plot the location of all the other ships in the formation, in the naval formation.

Q. Then at this stage you had on a maneuvering board the positions of all the vessels with respect to one another?—A. Yes, sir.

Q. Then, what did you do, Mr. Tazewell?—A. Well, sir, the whole idea being to make a graphic portrayal of what the lights, of the location of the lights, I had to settle on a scale which was workable and practical. That I did and arrived at a scale of a hundred and fifty feet equaled one inch. In short, the model that you see there represents a circular plane at a scale of fifteen hundred yards, it being thirty inches from the center to the circular plane.

* * * * *

[787]. Redirect examination by Mr. CRENSHAW:

Mr. CRENSHAW. Now the important part of this whole thing is that, of course, these lights demonstrate what the *Washington* in fact missed. These lights demonstrate the ships of the formation excluding the *Ruchamkin*. The *Ruchamkin* was on the other side of this heavy formation coming up at high speed.

Now anything that would allow or suggest to the *Washington* to come up to go ahead of that formation brought her in range of what we have termed the hidden missile. The *Ruchamkin*, which was invisible to the *Washington*.

Now this situation, the two seven o plot, illustrates that instead of being brought across the bow of the hidden missile, what would have happened would be she would come up with a gradually increasing number of red lights ahead [788] and, she did testify that she sighted the two red lights ahead, and the obvious indications were that these lights would have become noticeable and they would have come down here.

But, unfortunately, she did not see the red lights of the formation until the plot of two o two, as the first Exhibit No. 2 depicted.

So that by means of these cards and this exhibit we feel that this is the most graphic way that we could demonstrate the appearance to the mate on the *Washington* of how this formation looked.

Now Commodore Smith, who testified yesterday has had an abudance of experience in naval formations and he testified that you cannot recognize them by their lights. Now——

Mr. McGOVERN. Said it looked like Atlantic City.

Mr. CRENSHAW. We have striven to find out why it doesn't look like a naval vessel and we believe that this exhibit does illustrate why it doesn't, and as a single vessel coming up, not knowing it's a Navy ship, they have to treat it with the lights as they become apparent to them. So that we think that this exhibit will be of [789] assistance to the Court in appraising the worth of what the mate of the *Washington* did.

Mr. McGOVERN. Now, Mr. Crenshaw, on all these exhibits you have all of the lights which you show are always on the starboard hand of the tanker *Washington;* is that correct?

Mr. CRENSHAW. That is obviously correct. Yes, sir.

* * * * * *

[791] Recross-examination by Mr. McGOVERN:

Q. Did anyone assist you in the preparation of this display?—A. Yes, sir.

Q. Who?—A. My partner in architectural practice and the two draftsmen who worked for us, and, of course, Mr. Crenshaw and I consulted because we had to start from scratch, of course.

Q. Now how long did you and Mr. Crenshaw, who is the lawyer, consult about this display?—A. Well, sir, I would say we had four or five meetings varying from a half an hour to two or three hours.

Q. Now, sir, are you a licensed marine architect?—A. No, sir.

Q. You are an architect for land work?—A. (Nodded.)

Q. You have to answer yes or no. She can't take your nod down.—A. If the differentiation is such I suppose that is true. I am a licensed architect. I don't think that necessarily applies just to land work, but——

Q. Isn't there a different license for being a marine [792] architect in the State of Virginia?—A. I presume so, sir. I don't know.

Q. You have never done any marine architectural work, have you?—A. Oh, no, sir.

Q. Now on the previous display which you made up were these displays of ships you testified you had made these displays up before; what kind of displays were they?—A. Well, professionally my models have been of buildings primarily, as well as some little nature observances such as grass, trees, water. I have never actually made a display exactly like this before.

* * * * *

Redirect examination by Mr. CRENSHAW:

[797] Mr. CRENSHAW. We would like to offer the exhibit.

Mr. MCGOVERN. Your Honor, the Court has looked at the exhibit. The witness has testified to the exhibit. I want to object to the use of the exhibit and——

Mr. CRENSHAW. I couldn't hear you.

Mr. MCGOVERN. I said the Court has looked at the exhibit. The witness has testified to the exhibit. I just want to object to the introduction of the exhibit as not being a representation made by a marine architect or any person shown to have been at sea, not including the material which was in the possession of Mr. Crenshaw when he prepared the factual informa-

tion, one upon which the witness has testified to and not including all the lights where were in fact visible. Now with respect to binoculars, Mr. Crenshaw made the pertinent point that our man, Admiral Persons, testified that he saw the colored light of the tanker at ~~0 one five six or 0~~ one five 0, about the same time——

Mr. CRENSHAW. Five seven.

Mr. McGOVERN. Five seven. Anyway, about the same [798] time as the first exhibit. Now he saw the green lights of the other ship. Now in ordinary collision work, if you can see the other man's colored light, he should certainly be able to see your colored light.

Now the representation has been so set up so that the colored lights are eliminated because it complicates the display. Now I understand why the witness did that, but I object to putting that kind of material in the record, which is going to go from here to maybe two other courts. It is just unduly complicating the factual situation.

Now if by any chance we have a witness of the tanker who will actually testify he saw all of those lights, now I'd be very happy to let it in, but we have no witness from the tanker. This is a complete construction.

The COURT. Objection overruled and the exhibit will be admitted.

* * * * *

Excerpts From Deposition of Severn Joyce, Witness for the Texas Company, Taken at Hartford, Connecticut, on February 23, 1955

Direct examination by Mr. BRUSH:

[2] Q. In November 1952 were you an officer on the U. S. S. *Lloyd?*—A. I was.

* * * * *

[22] Q. Now, as you were proceeding in this group on this night, you were on watch as officer of the deck, I believe?—A. That is correct.

Q. Was there any superior officer on the bridge with you?—A. At the time of the collision?

Q. Well, at any time.—A. Yes.

Q. Who was there?—A. The captain.

Q. Well, when was he up there?—A. As I recollect, he came to the bridge at my request approximately a half hour prior to the collision.

Q. I see. And was he on the bridge or did he remain on the bridge for that half hour?—A. He did.

Q. Now, why did you call him to the bridge?—A. Because my CIC had reported the *Washington* on a collision course.

Q. Now suppose we get down to that specifically. When did you first receive information of the presence of the *Washington*, and how did you get it? Did you get it through your CIC or did you observe it or what?—[23] A. I got it through the CIC who had picked it up on radar.

Q. They had picked it up. And what information did you get? Can you remember now?—A. Bearing, distance and course.

* * * * *

Q. At any rate, you remember that the first knowledge you had of the presence of the *Washington* was a report that came to you from someone in the CIC that they had picked up this target, and they gave its bearing, distance and course; is that right?—A. And speed.

* * * * *

[24] Q. Now will you proceed from there and tell us what was done on board your vessel from that time until the time of the collision?—A. As I recall,

we made a report of the contact to the task force commander. There may have been several reports.

Q. At least, you have some recollection now that there may have been?—A. Some report was made, yes. And as the *Washington's* course remained steady, I reported her presence to the Captain and requested him to come to the bridge.

* * * * *

Q. Bradley. When he came on the bridge what did he do? What did you say to him and what did he say to you?—[25] A. I showed him the *Washington*'s position, and he stayed on the bridge to observe it pass through the formation.

Q. I see. Now, could you see the *Washington* at the time it was reported to you by CIC?—A. I don't think so. It should have been picked up beyond visual range.

Q. It should have been or could have been?—A. Both.

Q. I see. Did you try to find her?—A. Certainly.

Q. How did you look for her?—A. With binoculars, myself.

Q. Yes.—A. And directed the lookouts to do likewise.

Q. Could you see her?—A. At the time of the report?

Q. Yes.—A. I don't recall, but I doubt it.

Q. Do you remember whether after that you did pick her up?—A. Yes.

Q. Through binoculars?—A. Yes.

Q. When you did pick her up, tell us what you saw. What lights did you see? Do you remember?—A. No. I couldn't say what I recall that I saw. I can only say what I would expect to see, remembering which quarter she came from.

Q. And that would be what?—A. She came in on my port bow.

Q. Yes.—A. And I imagine I could see all of her running lights. In any event, I should have seen her masthead light and her port running light.

Q. Her port running light?—A. Yes.

Q. That would be a red light?—A. Yes.

[26] Q. Why would you see her port running lights?—A. Because she was approaching from my port side.

* * * * *

[29] Q. Now tell me, did you have any instructions, or were there any standing orders or any regulations or anything of any kind that you know of regarding the presence of other vessels or vessels other than Naval vessels in your group, approaching you? What were you supposed to do? Did you have any orders as to that?—A. In the case of this particular formation, it was our responsibility to report the actions of such vessels when we initially made the contact, and if we were assigned to track that vessel we would have made continued reports to the task force commander. In any formation it is the responsibility of the officer of the deck to exercise prudence and judgment to avoid [30] any embarrassing situation.

Q. Now, suppose it became necessary to change your course or speed to avoid a collision or possible contact with this vessel. Would you take that on your own initiative or would you wait for instructions, or what?—A. It would depend upon the time element. Ordinarily you should request instructions from either the screen commander or the task force commander.

Q. In other words, you wouldn't ordinarily change your course except in emergency unless you received instructions from the superior task force commander or the screen commander?—A. That is right.

Q. And if you felt you should have such instructions you would request those instructions; is that right?—A. That is right.

* * * * *

[33] Q. (Handing paper to the witness) What I am more interested in getting at is whether the Lloyd herself, whether on the Captain's orders or on the orders of either one of the higher echelon, Captain Day or Captain Persons on the screen, reduced speed, that is, whether the Lloyd did in fact reduce speed.—A. It is my recollection that the Lloyd reduced speed as a result of my having conferred with the Captain. We felt that prudence required us to take that brief precaution until the Washington passed us. We then resumed our station.

Q. And it is your recollection that you did that without any instructions from the task force commander or the screen commander?—A. That is correct.

Q. What was there about the appearance of the situation to you that led you and the Captain to conclude that the Lloyd should reduce speed?—A. That there was insufficient safety margin to prevent a chance collision of the two vessels.

Q. Now, when was that done with respect to the Washington crossing ahead of you?—[34] A. Several minutes prior to the Washington crossing.

Q. And that was done without respect to any other vessel in the flotilla?—A. That is correct.

Q. Did you advise anybody, either on your ship, except of course the engineer, or in the task force group, of your reduction of speed?—A. I advised the Captain.

Q. That is the Master of the Lloyd?—A. That is right.

Q. Anyone else?—A. No.

Q. After you first reported the contact or the presence of the Washington to the task force commander, did you thereafter receive any instructions affecting your navigation? I say you. I mean the Lloyd's navigation. From the task force commander or the commander of the screen?—A. We received instructions from the task force commander at about the time of the Washington's passing, to take such action as was necessary to avoid collision.

Q. And you got that from the task force commander?—A. Yes.

Q. How did that come over to you?—A. By radio.

Q. Did you therefore take any such action?—A. I had already taken it.

* * * * *

[38] Q. Now, as one of the vessels in the screening group, what would be your duty to protect—or with respect to the vessels in the formation—if third parties or other vessels approached a formation of this kind? What did you understand your duty to be?—A. Our duty with regard to the formation was to report the presence of those vessels. Any further action would come as a result of instructions from either the task force commander or the screen commander.

* * * * *

[55] Cross-examination by Mr. WOOD:

Q. Mr. Joyce, on this particular night, during the time of your watch, did you see lights on the other vessels in your formation?—A. Yes.

Q. What lights could you see?—A. I don't recall. I just remember that there were lights available which enabled me to establish relative positions of ships in the formation.

Q. Were their running lights visible?—A. Yes.

Q. Were their masthead lights visible?—A. Well, a masthead light is one of the running lights. I don't remember which lights I was able to identify. It is illogical that a ship would have one of the running lights and not all three. Actually there are four. There is a stern light.

Q. But you are certain that there were running lights [56] visible?—A. Yes.

Mr. Wood. I believe that is all, Mr. Brush.

Redirect examination by Mr. Brush:

Q. Were these lights at different heights above the water?—A. Yes.

Q. Did it look something like a village out there?—A. Any naval formation looks like a village.

* * * * *

Excerpts From Deposition of Edgar S. Catlin, Jr., a Witness for the Texas Company, Taken at Brunswick, Maine, February 25, 1955

[2] Direct examination by Mr. Brush:

Q. Will you state your name and address? A. Edgar S. Catlin, [3] Jr., 2 Hawthorne Street, Brunswick, Maine.

* * * * *

[4] Q. Were you on board the *Hollis* on the night of November 14, 1952, when the *Ruchamkin* had the collision with the Tanker *Washington*?—A. Yes. I was.

Q. What was your position on the *Hollis* that night?—A. At the time of the collision I was officer of the deck, on the bridge.

Q. Can you tell us, sir, when you went on watch, took that position, and when you went off watch that night?—A. I went on watch approximately 20 minutes of midnight and the Captain relieved me at the

con within about 20 to 25 minutes of that time; roughly at the time of the collision, in order that I could supervise the loading of the boats.

[14] Q. At the time you set out, or before, did you receive any instructions as to what you were to do in the event you met or came upon merchant ships traveling in the area where these maneuvers were to be performed?—A. We received no instructions; or I, myself, never did receive instructions of what to do in case of encountering merchant ships. But from being a watchstander I personally knew what to do in case some other ship came in close proximity to my ship.

Q. Now, let me ask you this. In performing this maneuver is it not true your ship was obliged to follow a specific course or speed or order of the task force commander in company with other vessels in the maneuvering group, is that right?—A. That's right, we were given a base course and speed which the whole body would follow. However, that would not be binding in case of some unforeseen happening, such as another ship closing in on you; and you would not follow it so you would hit the guy.

[15] Q. Then, I take it, you use your own judgment as a navigator to meet the situation?—A. That's right, yes, because the whole responsibility rests on the OD anyway.

Q. On the basis of what do you rest that decision?—A. I believe that is a standard Navy rule, at least, of safety. Where the safety of your ship is concerned it is up to the officer of the deck to keep your ship from danger.

Q. And you are now telling us about some Navy regulation you have read that leads you to that understanding?—A. It has always been my understanding, in standing top watch, the ship is my responsibility. We are bound by the base course and speed in this

case only insofar as we did not stand in any danger to the ship or to another ship.

* * * * *

[23] Q. Now, as you proceeded was the Hollis showing any lights; by that I mean a masthead, range or side lights?—A. Yes.

Q. How do you know that?—A. I remember seeing all the other ships lit up because I could take visual bearings with my pelorus in order to be sure I was maintaining station and any time we are running with lights on it is standard procedure to check the lights every hour.

* * * * *

[24] Q. I take it you say the running lights, that is the masthead light, the side lights and the range light were lit?—A. Yes.

Q. During this period from midnight to 2:15 a. m., did you observe either of, or any of these vessels exhibiting running lights?—A. As I said before, I recall taking bearings on the guide ship, and I assume all were exhibiting their running lights. I couldn't have seen any that weren't, probably. I assume every ship in the group was showing it.

* * * * *

[59] Q. Did it ever occur to you that the officer on watch on the *Washington* might not know how many vessels were in this information?—A. No, it didn't occur to anyone I might know of.

Q. Except possibly for the white lights and colored side lights she might see, there wouldn't be any information as to how many ships were in this formation, would there?—A. No, but I assume the number of lights would tell her how many ships were in the formation.

Q. So we may understand that, what would she see in coming along there? She would see lights at different heights?—A. That's right, and she would see a certain number of side lights.

Q. Yes, and until those side lights become visible is there anything to indicate the course and direction of the ships, excepting these white lights she might see?—A. Well, it is a standard rule of seamanship, you can tell [60] the course within 30 to 40 degrees by the range light. That is the reason for having it, as I understand it.

Q. You are speaking now of a single vessel?—A. That's right.

Q. Are you in a position to observe what appearance all the white lights gave on this occasion?—A. They gave quite a glow, there were quite a few of them.

Q. Would you say it looked somewhat like a village on a shore?—A. I wouldn't say it looked like a village but certainly there were quite a few lights there.

Q. All in fairly close proximity to each other?—A. That's right.

* * * * *

Excerpts from Depositions of Dr. Edwin Rogers Mickle, Witness for the Texas Company, Taken at Midland, Texas, September 17, 1955

[2] Direct examination by Mr. EIKEL:

Q. State your name for the record.—A. Dr. Edwin Rogers Mickle.

Q. What is your profession?—A. Physician.

* * * * *

[3] Q. When did you graduate from Medical School?—A. 1952.

Q. After that where did you spend your internship?—A. At the United States Public Health Service Hospital in Galveston.

Q. State how long you were attached to the staff of that hospital?—A. Slightly longer than three years; three years and two days.

Q. What were those days?—A. June 1, 1952 to July 2, 1952.

* * * * *

Q. On or about October 2, 1952, wha was your status at the Marine Hospital?—A. Intern assigned to surgical service.

Q. In connection with that assignment, did you make examinations of marine patients who sought admission for treatment?—A. Clarify "marine patients."

Q. Merchant Marine seamen.—A. Yes.

Q. I will show you clinical record of one James A. Upton, registered as No. 44428, which has previously been obtained from Dr. Cooper at the Marine hospital, and which is marked Respondent's Exhibit 2 in the deposition that has been taken of Dr. Cooper. Look at that and inform me whether you can identify that as containing entries made by you at the time of the examination of James Upton.—A. It does contain such entries by me.

* * * * *

[5] Q. What was the nature of the examination you made of him after his admission?—A. It was routine general physical examination.

Q. At that time did you take a history of his complaints?—A. Yes.

Mr. KOPPEL, Q. This was October 7, 1952?—A. Yes. He was admitted on the 5th, and I saw him on the 6th.

Q. (Mr. Eikel) He was admitted on October 5th and you wrote admission orders on the 6th.—A. Yes,

he was admitted on the 5th and I saw him the following morning.

Q. On the initial orders does anything show with respect to his eyesight or eyes?—A. No.

Q. The first entries on the record relative to his eyesight was made by you on the examination of October 7th. That correct?—A. Yes.

Q. I direct your attention only to the entries relative to his eyes since this is the issue.—A. Yes.

Q. Did you take a history of him on your examination of October 7th respecting his eyesight?—A. Yes.

* * * * *

[7] Q. Do you recall now whether or not the entry you made there is a correct summary of what he told you?—A. Yes.

Q. Will you read it for us, please?—A. "Right eye has slowly become blind in the last five years."

Q. Are there any other references to his eyesight in the history given by the patient either on that page or the one preceding it?—A. No, sir.

* * * * *

Q. The next entry in this record after the history you took from him, what is that with respect to eyesight?—A. Physical examination.

Q. Was that made on October 7th or another date?—A. October 7, 1952.

* * * * *

[8] Q. Will you give us, first, the entry you made at the time you made your examination?—A. That is again under HEENT. "Auditory canals filled with cerumen; right eye completely blind; fundi negative; extra-ocular movements normal."

Q. Are there any other entries of your examination relative to the eyes or either of them?—A. At the end of the physical examination there is listed an impression that I had of the patient's condition and Item 2

under that is "Blindness right eye; cause undetermined."

Excerpts From Deposition of Dr. J. J. Tritico, Witness for the Texas Company, Taken at Port Arthur, Texas, on September 27, 1955

Direct examination by Mr. EIKEL:

[3] Q. State your name, please.—A. Joseph John Tritico.

Q. And what is your profession?—A. I am a physician, Jefferson County, Port Arthur, Texas.

* * * * *

[4] Q. Doctor, are you an ophthalmologist?—A. No.

Q. What training, if any, have you had to practice in the special branch of medicine called ophthalmology?—A. Not more than with the internship, which is one month rotating internship, spend a month on eye, ear, nose, and throat, at Charity Hospital.

* * * * *

[5] Q. Have you been employed frequently by the Texas Company for that purpose of physical examinations since that time?—A. Yes.

Q. Just tell us generally what procedure you follow in examining an applicant for employment as a seaman aboard a vessel.

* * * * *

And then I take over for such as weight and height and so forth, and the blood pressure is checked. And the eyes are checked, in which we have a series of letters on the board, which is recognized by the ophthalmologists as being a fairly accurate method. I mean, it isn't—you couldn't prescribe glasses with that sort of thing. And one eye is covered and [6] they are asked to read the smallest letters they can see, and then the other eye is covered, and then if they

wear glasses they are told to put the glasses on and the same procedure is repeated.

* * * * *

[7] Q. Now, Doctor, I am now questioning you about Respondent's Exhibit 1, and I want you to see if you can identify any particular portions of that as having been in your handwriting, or checks made in your handwriting.—A. All of it is, all except—from here on down, the examination itself. Now, this is not my handwriting, but from here on down is mine.

Q. You are pointing——A. The physical examination proper.

Q. Those spaces below this heavy black line about midway on the paper?—A. Yes.

Q. A little bit above midway. In other words, the [8] spaces below his signature?—A. Yes, below his signature.

* * * * *

Q. And, Doctor, do you have any independent recollection of having examined a seaman named James A. Upton? You apparently signed this Respondent's Exhibit 1.—A. No, I couldn't remember him. I wouldn't know him if I saw him now.

Q. Entries made here below this black line were made by whom, did you say?—A. Me.

* * * * *

[9] Q. Doctor, what were the entries there with respect to eyesight?—A. On the right eye it is recorded here that he had 20–40 vision, and 20–20 on the left. No indication he wore glasses or used glasses.

* * * * *

A. At that time I had a room approximately eighteen feet long, and we had a—this room was built where there was a door in the back, and this chart was on the door. We had a regular light thrown on

it because the light in the office wasn't as good as it is here, what we have now. And he stood at the far end of the wall and one eye was covered with a piece of cardboard.

* * * * *

Cross-examination by Mr. KOPPEL:

[14] Q. You testified that your old office or examining room was eighteen feet long?—A. Yes.

Q. What does 20–20 vision mean?—A. What does 20–20 vision mean? 20–20 vision—I will not give it the same way as an ophthalmologist. We have only the method of using that chart, the Snellen. It is placed at a distance of twenty feet, and the individual will stand twenty feet away and if he is able to see that with the normal amount of lighting, then that patient's vision is normal as far as his sight is concerned.

Q. But, as a matter of fact, this patient couldn't have stood twenty feet from the chart?—A. No. Eighteen feet. I was giving him the benefit [15] of the doubt.

Q. Eighteen feet if he was up against the wall, and if he was closer it would be considerably more?—A. Yes. In other words, his eye is actually worse than 20–40.

Q. You testified you conducted no type of visual field test?—A. No, we do not.

Q. Will you generally describe, and not necessarily in technical, ophthalmological terms, what a visual field is?—A. A visual field is an individual who is able to see at all angles to the eye.

Q. Without reference to any particular individual, what is a visual field itself?—A. It is the entire field that the individual can see with one eye from all angles, you might say.

* * * * *

Excerpts From Testimony of Ralph Stone Smith, a Witness for the Government

[28] Direct examination by Mr. McGOVERN:

Q. Will you please speak out loudly so that everyone can hear where you presently are employed.—A. My home is in Toledo and I work for the Toledo Blade. That is the daily newspaper.

* * * * *

Q. Now in October and November, 1952, were you in the Navy?—[29] A. Yes, sir.

Q. Where were you stationed?—A. I was on the staff of the Commander, Amphibious Force, U. S. Atlantic Fleet, with headquarters in Norfolk.

* * * * *

Q. I hand you this piece of paper which is marked Government's 1 for identification and ask you what it is.—A. This is a news release written with my supervision. In fact, I wrote it regarding Operation Seascape, in which the tanker *Washington* and the U. S. S. *Ruchamkin* collided during this operation. This news release was written in advance of the operation and disseminated to the Virginian Pilot, only to one newspaper published in Norfolk, and to the Amphibious Force newspaper. It told of the operation, the shore phase and the afloat phase, gave the time of arrival of the vessels at Norfolk; also the time of the arrival of the assault phase to the beach.

Q. What was the date of that release?—[30] A. This was dated October 24.

* * * * *

Q. I hand you a document marked Government's 2 for identification and ask you what that is.—A. Sir, this is a release, a news release put out to the news media in the Atlantic Seaboard, totaling a hundred

and thirty-seven newspapers and radio stations, dated October 26. This is a condensed version of the operations which we sent to the larger newspapers from Boston inland as far as Pittsburgh, Richmond on down south to Atlanta and Charleston. We tried to cover the whole Atlantic Seaboard from Maine area. Of course, Boston papers would cover Maine, clear down [31] to Florida Coast.

Q. Now I hand you another paper marked Government's 3 for identification and ask you what that is.—A. Sir, this is another news release that I wrote, disseminated October 29. This was given the full treatment, as we might say; it was distributed to a hundred and seventy newspapers, radio stations and television stations prior to the operation. It also went from, on the north from Boston as far south as Atlanta and inland as far as Louisville. All major newspapers got a copy of this release. It was carried, to my knowledge, in Boston papers and Norfolk papers. I saw those clippings——

* * * * *

A. Might I add, sir, we were particularly interested in coverage in the New England area because the Army personnel embarked in this operation were from Fort Devens, the regimental combat team was from that area.

* * * * *

[32] Q. I hand you this Government Exhibit 4 for identification which is a little previous—that is a story from the Norfolk paper.—A. This is a story that appeared in the Norfolk Ledger Dispatch, written from our release, that the Public Information Officer put out relative to the operation. The heading on it is Five Ships of Amphib Force Here.

Q. I wish to restrict your testimony in view of the shortage of time to the part of the press release which

refers to the time and the place where the Amphibious operation is to occur.—A. Yes.

Q. Now going backward to those documents, I want to call your attention to the next to the last paragraph of the Norfolk Ledger Dispatch which was Government's Exhibit 4 for identification. Now would you read that paragraph into the record?—A. The paragraph says:

"The climax of the training will occur on November 14 at Camp Pendleton when the soldiers will stage an amphibious assault landing. Air and surface units of the Atlantic Fleet will [33] participate."

* * * * *

Q. Now will you go back into your preceding press releases and read the paragraphs of those releases with respect to the same points?—A. Yes, sir. Reading now from the one dated October 29, it went to a hundred and seventy newspapers, radio and television stations. It is the fifth paragraph, again, as follows:

"The trainees then will be embarked in ships of Amphibious Force for the afloat phase. It will be climaxed November 14 with an assault landing on the beach at Camp Pendleton just south of Virginia Beach."

That is the end of the paragraph.

Another release dated October 26, which went to a hundred and thirty-seven media outlets, the paragraph relative to this, the assault, reads as follows:

"The training will reach a climax November 14 when an enemy-held beach at Camp Pendleton, Virginia, will be assaulted by the 278th R. T. C. The landing will be supported by air and surface units of the Atlantic Fleet."

Here is the release that was written expressly for [34] the Virginian Pilot, in Norfolk, relative to the assault.

"The training will be climaxed November 14 at a joint Army-Navy exercise at Camp Pendleton, Virginia, just south of Virginia Beach. At that time the team will be landed by Amphibious Force ships in an assault against an enemy-held beach. The landing will be supported by air and surface units of the U. S. Atlantic Fleet, simulating Navy air and gunfire."

Mr. McGovern. I would like to offer 1, 2, 3, and 4.

Mr. Crenshaw. No objection.

The Court. Let them be admitted.

* * * * *

Excerpts From Testimony of Emerson Hayes, Jr., a Witness for the Government

[36] Direct examination by Mr. McGovern:

Q. Captain, wil you please give your name and your home address, and speak up loud so the people in the back can hear.—A. My name is Emerson Hayes, Jr. I live at 1001 South Frederick Street, Arlington, Virginia.

Q. Now what is your present assignment?—A. I am assigned to the merchant vessel personnel division of the Coast Guard Headquarters.

Q. Were you a member of the merchant marine before you joined the Coast Guard?—A. Yes, I was.

Q. Where did you go to nautical school?—A. Pennsylvania State scholarships, Philadelphia.

Q. Do you have a master's license?—A. Yes, I have a master's license.

[37] Q. Have you sailed on that license and had command of that license?—A. Yes, I have.

Q. For what company?—A. For the United States Lines approximately three years.

Q. Do you have a book or bulletin which I have asked you to bring?—A. Yes, I do.

Q. Will you tell us what it is.—A. This is a bulletin that was published by the former Bureau of Marine Inspection and Navigation under the Department of Commerce. It is dated August, 1939. It is Volume Four and Number Two.

Q. Is that your file copy?—A. Yes, it is.

Mr. McGovern. I have had photostatic copies of the page we are interested in made.

(Handed to counsel.)

By Mr. McGovern:

Q. It is the paragraph which is captioned Sea Manners. Now will you be good enough to read that paragraph.—A. Yes. Entitled, "Sea Manners," begins:

"A passenger vessel recently crossed through a large force of the United States Fleet from the [38] port to the starboard side. All vessels apparently had the right of way and as this occurred at night, all were showing their running lights. As a result one of the large battleships had to change course sharply and take extreme measures to avoid collision. Regardless of the relative positions of a single vessel and of a fleet as would affect the question of right of way, it is pointed out with emphasis that for reasons obvious to any seaman, it is imprudent for a single ship to hold its course and pass through a fleet formation when by an early change of course such single ship could pass astern or otherwise well clear of the fleet's formation. A large number of naval vessels proceeding in company formation and exact sets of units operating close to each other, the orderliness and safety of these units is hazardous when one or more of them is forced individually to change its course and speed for a single ship of any character, or for it to cut through or pass critically close to such a formation constitutes comparable negligence of caution, and to say the least, very bad sea manners. The Bureau realizes that such

incidents have been very rare in the American Merchant [39] Marine and brings attention to this case in order that younger and less experienced watch officers may profit therefrom."

Mr. McGOVERN. I would like to substitute the photostatic copy for the original and to offer the photostatic copy as Government's Exhibit 5.

Mr. CRENSHAW. No objection.

* * * * *

By Mr. McGOVERN:

Q. Captain Hayes, have you sailed out of the port of Norfolk and Hampton Roads?—A. Yes, I have.

Q. Are you also, as part of your regular duties in the Coast Guard, familiar with the requirements of the rules of the road, particularly international rules?—A. Yes, I am.

Q. Now I am directing your attention to the International Rules which were in effect in 1952, which were for the purpose of this case—we will call it Old International Rules. Now what lights would a fishing vessel on the high seas off Cape Henry be showing, if she were fishing under the International Rules as they existed in November, 1952?—A. Well, if it was the prevailing type of vessel, a [40] trawler, that would be there, she would show a tricolored lantern on her foremast which would consist of a white light in the center and a green light showing on the starboard side and a red light on the port side and six to twelve feet below that light, she would show an all around white light.

Q. Now what lights would be shown at the same time in the same place by vessels of a normal length as big as a destroyer which were under way and showing the required navigational lights?—A. On her foremast she would show a foremast light, which would be a twenty point light showing from two

points abaft or port beam all through the range of bearing to two points abaft the starboard beam. She would show on her starboard side a green light that would show from dead ahead from two points abaft the starboard beam and on her port side a red light which would show from dead ahead two points abaft of the port beam. Then she would also show a stern light which would show six points forward of her stern. In other words, from the two points abaft of beam to dead astern, and cover the rest of area, would be a white light.

Q. Captain, have you navigated with radar?—A. Yes, I have.

Q. For what company?—A. For United States Lines.

Q. Have you also navigated with radar for the Coast [41] Guard?—A. Yes, we have.

Q. What kind of radar navigation did you do when you were with the United States Lines?—A. I was on the radar-equipped vessels that I was on, was running in the North Sea. We went to Antwerp, Amsterdam, and Rotterdam and we used radar navigation primarily in the North Sea because it was mined at that time and we had mine channels which we had to proceed through and generally in many cases poor visibility.

Q. Have you had any unusual experiences with radar?—A. Yes, the one particular one occurred when I was on the—stationed on the Coast Guard cutter—*Ingham*.

Q. Spell Ingham.—A. I-n-g-h-a-m, and we were stationed on weather station Dog, in the North Atlantic Ocean, and where we were maintaining station in a ten-mile grid, while we were drifting on the station, it was near the North Atlantic steamer tracks, why, we picked up the *Queen Mary* which later identi-

fied as the *Queen Mary*. It was a large three-stack passenger ship heading eastward. We picked her up visually, and as I recall in this, the first question that came up is, why hasn't it been reported from CIC by the surface search radar, and we went in to check on that. The officer of the deck went in to check on it. And it turned out they had no target on the [42] CIC on the surface search radar, so they stopped the radar sweep and they searched on the visual bearing for this vessel which was approximately fifteen miles away, and we still had no target. Now this occurred on a relative bearing of southwest from the vessel, from the *Ingham*, and as the *Queen Mary* proceeded on her eastward passage, coming in, passing our vessel, there appeared then a faint target and which gradually became a very large target, but for an appreciable amount of time there was no target shown on the surface search radar.

Mr. McGOVERN. Your witness.

Cross-examination by Mr. CRENSHAW:

Q. Captain, you spoke of a tricolored light on these fishing boats and a white light. Now if you——A. Yes, sir.

Q. Were seven or eight or ten miles away from the fishing boat, what would you see?—A. Well, depending on your point of approach, or the heading of the fishing vessel, you would see one of three things. You would see a red light over a white light, or two white lights, or a green light over a white light on the same line. In other words, they would look like one was on top of the other.

Q. Now this publication—all I have here is Bureau [43] of Marine Inspection and Navigation Bulletin on this photostatic copy, came out of that big green book. Do you know when that was promulgated? It's dated August 1939.—A. Yes, it was a monthly

bulletin. It was published by the Bureau of Marine Inspection. It was circulated through the industry and to merchant ships.

Q. Was that in effect during the war?—A. Well, the Coast Guard assumed its functions of the Bureau of Marine Inspection and Navigation. They continued a similar publication but the title was changed to Coast Guard Bulletin, and later to Merchant Marine Counsel and Proceedings.

Q. Did that document supersede this then?—A. Yes, it did.

Q. So this would not be in effect in 1952?—A. Well, its publication for information of merchant seamen. Now being in effect, it doesn't put anything in effect. It's more or less circulated.

Q. It's not currently promulgated or circularized amongst merchant marine? It exists, of course, in a publication somewhere?—A. Yes, it exists now. There is a similar article in books on seamanship that I know of.

Q. Are you familiar with the Hydrographic Office Publication HO205?—[44] A. Not the publication you have in your hand; no. I haven't had occasion to use it.

Q. I show you paragraph 111 of HO205 which is entitled Sea Manners, in which there is some similar to the paragraph that you have read——A. Yes, it is.

Q. Now, if this publication were, if this publication were issued subsequent to it, to the one to which you referred, would it supersede or supplement, or what would it do with respect to that?—A. Well, I think that this publication which was introduced here doesn't have the effect of a directive or the effect of making compliance. It's used just to pass information on to the industry.

Q. It's just a comment then of an interesting note?—A. That's right. Well, not—I wouldn't say that. I would say it is a caution.

Mr. CRENSHAW. That is all.

Excerpts From Testimony of Arthur James Green, a Witness for the Government

[45] Direct examination by Mr. McGOVERN:

Q. Mr. Green, will you please talk up so we can hear you, and give us your name and your home address.—A. Arthur James Green, 2718 Bellwood Drive, District Heights, Maryland.

Q. Where are you employed, Mr. Green?—A. United States Navy, Hydrographic Office, Suitland, Maryland.

Q. In what division?—A. Nautical Information, Maritime Safety Division, Nautical Information Branch.

Q. Do you have a merchant marine license?—A. Yes, I do.

Q. What license do you hold?—A. Master's.

Q. Who did you sail for when you were still sailing as master?—A. I never sailed as a master, sir.

Q. No? I'm sorry. When you were sailing——A. I sailed with United States Lines and Seas Shipping Company.

* * * * *

[46] Q. Were you here when the last witness, Captain Hayes, was examined?—A. Yes, sir; I was.

Q. Now do you have there with you the various documents tracing the paragraph on which we call Sea Manners?—A. Yes, sir; I do.

Q. Would you be good enough to trace them through and for the convenience of the Court to start at the beginning rather than at the HO205, which you compiled?—A. Very well, sir. The first document I

have is Hydrographic Bulletin, Washington, October 11th, 1939. That is published by the United States Navy Hydrographic Office with Bulletin Number 2614. The article I am referring is Sea Manners and it is identical to the one that Captain Hayes just read off.

Q. Does it show where it was copied from?—A. Bulletin Number Two, August, 1949, Bureau of Marine Inspection Navigation, Department of Commerce.

Q. You are looking at this Hydrographic Bulletin dated October 11th, 1939?—A. Yes.

* * * * *

[47] Q. Now would you tell us a little more about what the Hydrographic Bulletin is and how it is set out?—A. Yes, sir; the Hydrographic Bulletin published by the Hydrographic Office had been published weekly. It is no longer in existence, just since 1954, I believe, was the last time it went out, but previously had been issued every week with various articles of information to the mariner. It had—oh, this one in particular has medias or abnormal visibility, water spouts, attention of all masters, weather reports; also had broadcast information, navigationl warnings, time signals and information to the mariner to be just more or less a weekly newspaper with an official backing.

Q. Was there any charge made for this?—A. Sir?

Q. Was there any charge made for this?—A. No, sir; this was issued to all mariners free of charge.

Q. Would you then go on to the next point in the chronological history of the chapter on Sea Manners?—A. Next I have a bound copy of the British Notice to Mariners, British Admiralty Notice to Mariners, dated 1940. I will read from Notice to Mariners, 1. This is Article [48] Number Seven in Notice to Mariners, Number One.

"Caution with regard to single ships approaching squadrons, or aircraft carriers. Former Notice Number Seven of 1949. The attention of shipowners and mariners are called to the danger of all concerned which is caused by a single vessel approaching a squadron of warships or merchant vessels in convoy so closely as to involve risk of collision, or attempting to pass ahead of or through such a squadron. Mariners are warned that it would be in the interest of safety for single vessels to adopt early measures to avoid approaching a squadron under the above conditions which might involve risk of collision and to keep out of its way. Three. Attention is also drawn to the uncertainty of the movements of aircraft carriers which must necessarily turn into the wind when aircraft is taking off or landing and circumstances where a single vessel has not taken early measures to keep out of the way of a squadron or aircraft carrier, the regulations for preventing collisions at sea must be the guide. Note. This notice of repetition of former notice quoted above Notice Number 7–7194 authority Lord Commissioners of the [49] Admiralty, L H 7537/39."

Q. Now would you go and take up with the next item in the history of this paragraph.—A. Yes, sir. Next I have here a nonregistered, unclassified publication called Janap 145 (C). It is published by the Joint Chiefs of Staff, Joint Communications, Electronics Committee, Washington 25, D. C., February 1951.

"Merchant ship communications facilities and emergency procedures. Janap 145 (C): Section 106, Sea Manners: A. The attention of ship masters is called to the danger of to all concerned which is caused by single vessels approaching a squadron of warships or merchant vessels in convoy so closely as to involve risk

of collision or attempting to pass ahead of or through such a squadron or convoy. B. Mariners are therefore warned that single vessels should adapt early measures to keep out of the way of a squadron or convoy."

Q. What was the next item?

* * * * *

The WITNESS. The next item would be HO Public [50] Number 205 Radio Navigational Aids, 1951, published by the United States Navy Hydrographic Office. I refer to Chapter Four on page 239.

"Radio navigational warnings. Section 400 A, M-i-r-c-a-s-t system, a broadcast system known as Mircast is used for the delivery of official Government messages originated by the Government agencies addressed to Government-owned, leased or chartered merchant ships. Complete information about the Mircast system is given in Janap 145 Baker Merchant Ships Communications by the U. S. Navy to all the U. S. Government agencies and United States commercial radio and steamship companies."

By Mr. MCGOVERN:

Q. Your next item?—A. The next item, B, the Hydrographic Bulletin Number Four, Washington, D. C., January 24, 1951, refer to paragraph called "Sea Manners."

"The attention of ship masters is called to the danger of all concerned which is caused by single vessel approaching a squadron of warships or merchant vessels in convoy so closely as to involve risk of collision or attempting to pass ahead of or through such a squadron or convoy. [51] Merchants are therefore warned that single vessels should adopt early measures to keep out of the way of a squadron or convoy. The following reports illustrate the danger, confusion and inconvenience that results when a single vessel fails to extend this courtesy."

Q. I don't think we have to go into that.

* * * * *

The WITNESS. The next publication I have is DNC 29, published by the Department of the Navy, Office of Chief of Naval Operations, June 1953, nonregistered, unclassified. I will read first from page 3. I will just read part of it.

"DNC 29 emergency procedures and communications instructions for U. S. merchant ships, nonclassified, nonregistered publication to DNC 29 is effective on 1 December 1953, at 001 hours. GMT supersedes Janap 145 (C), merchant ship communication facilities and emergency procedures which shall be destroyed without reports. That is publication—I will read next publication—I will read Section 106, Sea Manners.

[52] "The attention of masters is called to the danger to all concerned which is caused by a single vessel approaching a squadron of warships or merchant vessels in convoy so closely as to involve risk of collision or attempting to pass ahead of or through such a squadron or convoy. B. Masters are therefore warned to take such early measures as to keep out of the way of squadrons or convoys."

By Mr. MCGOVERN:

Q. That brings you up to the last document?—A. Yes, sir; it does.

Q. What is the last document?—A. HO Public Number 205, Radio Navigational Aid, 1955.

Q. Is that the document you compiled or helped compile?—A. Yes, sir; I compiled and edited.

Q. Now will you refer to the appropriate section in that publication?—A. All right, sir. Refer to Appendix A of subpublication which superseded

DNC 29 as of 1 September, 1955. I will read Section 111 on page 54 of Appendix A.

"Sea Manners. The attention of masters is called to the danger of all concerned which is caused by a single vessel approaching a formation [53] of warships or merchant vessels so closely as to involve risk of collision or attempting to pass ahead of or through such a formation or convoy. Masters are therefore warned that single vessels should adapt early measures to keep out of the way of formations or convoy."

Mr. McGOVERN. I would like to offer Exhibits 6 and 7.

Your witness.

* * * * *

Cross-examination by Mr. CRENSHAW:

* * * * *

[54] Q. Now I would ask you to read from this publication entitled "J-a-n-a-p 145 (C)," paragraph 104.—A. "104, Visual Communication in Peacetime. Visual Communication by merchant vessels are conducted in accordance with HO 87 International Code of Signals, Volume One, Visual. U. S. naval vessels are required to utilize appropriate opportunity to exercise a visual communication with U. S. merchant men. U. S. merchant vessels are urged to cooperate fully with U. S. naval vessels in this regard in order to gain professional efficiency which will be mutually beneficial both in war and peace, in particular merchant [55] vessels are urged to appropriately answer calls from U. S. warships and to purchase all information which may be requested. It is most desirable that complete cooperation and understanding exist between U. S. warships and merchant ships."

Q. That is all.

Excerpts From Testimony of Willis G. Partridge, a Witness for the Government

Direct examination by Mr. McGOVERN:

Q. Mr. Partridge, would you please give your name and your home address, and speak as loud as you can.—A. My name is Willis G. Partridge and my present home address is Portsmouth, Virginia.

Q. What part of Portsmouth, Virginia?—A. Port Norfolk, 147 Maryland Avenue.

Q. How long have you been in the Coast Guard?—A. Fifteen years.

Q. In October and November, 1952, were you assigned to [56] the Coast Guard Office at Norfolk, Virginia?—A. Yes, sir; I was assigned as Assistant Chief to the Aids to Navigation Section at the Office, the Commander, 5th Coast Guard District.

* * * * *

Q. I hand you a document which is certified under seal and which is marked Government's Exhibit No. 8 for identification, and ask you what it is and whether it bears your initials.—A. This is the file copy of Notice to Mariners Number 158 dated 10 November 1952 and it contains my initials.

Q. We are particularly interested in the portion of that Notice to Mariners which relates to Virginia Seacoast Amphibious operations to be conducted. Would you please read that paragraph?—A. Yes, sir.

"Virginia Seacoast. Amphibious operations to be conducted.

"The U. S. Navy advises that on November 14, 1952, Amphibious operations will be conducted in the vicinity of the Camp Pendleton beach area. Vessels are requested to exercise caution in the [57] area so as not to interfere with Navy operations, U. S. Coast and Geodetic Survey Chart 1222."

Q. Were you instrumental in preparing and sending out that Notice to Mariners?—A. Yes, sir; I was.

* * * * *

Q. I hand you another document which is marked Government's Exhibit 9 for identification, and ask you what that is?—A. That is a copy of the Notice to Mariners mailing list as of 29 May 1947 corrected with additions and deletions up to 12 January 1953.

Q. What does this mailing list show?—A. This mailing list shows the names of persons and activities receiving Coast Guard Notice to Mariners printed by the 5th Coast Guard District.

Q. How do people get on your mailing list?—A. Persons get on our mailing list by request, by letter and telephone call, postcard, so forth.

Q. And how do people stay on your mailing list?—[58] A. And annually the 5th Coast Guard District mails to all of those presently on the mailing list a postcard form prepared in which they signify their intent to remain on the mailing list, if they still have a justification therefor.

Q. Now how is the mailing handled? Is it a mechanical process?—A. The mailing of Notice to Mariners is handled by persons from personnel from the Aids to Navigation Section with help from the Supply Section, and they jointly prepare envelopes and fill the envelopes and take them up to the post office and mail them.

Q. Now how do they address the envelopes, by hand, or do they have a stamp process?—A. No, sir; the envelopes are all addressed by a machine in which a little name plate lists all the distribution and is done mechanically, sir.

Q. I call your attention to the list of persons who received Notice to Mariners and I call your attention to page 21——

Mr. CRENSHAW. I object to that question, sir. I believe the list shows the people to whom they were sent.

Mr. MCGOVERN. I apologize. I stand corrected.

By Mr. MCGOVERN:

[59] Q. The list showing the persons to whom the Notice to Mariners was sent. I must admit there is no proof that they received it and I called your attention to page 21, and to the item which is number seven from the bottom—A. Yes, sir.

Q. Of that page. That's right. Now would you read that?—A. All right, sir.

Q. Item N and explain what it means.—A. On page 21 of this document there is a note which reads as follows:

Note: AD JAN 31, 1950, "The Texas Company, 135 East 42nd Street, New York 17, New York, Mr. V. Ricciardi, Manager, Marine Department, Operations Division (forty copies mailed). Mr. Harry Lustine, 3033 Davenport Street, Northwest, Washington 8, D. C., beginning 1/31/1950, Mr. William B. Walker, president and manager of the Chesapeake Boat Basin, Box 213, Kilmarnock, Virginia."

In other words, these are just changes that occurred to our mailing list on January 31, 1950.

Q. We are interested not in the entire mailing list, but only in the portion of your mailing list which relates to the Texas Company. Now those last two names, Lustine and Mr. [60] William Walker, Chesapeake Boat Basin, relate to other people?—A. Yes, sir.

Q. Now do you have—were any envelopes, showing how the Texas Company is sent?—A. Yes, sir. I brought an envelope addressed, showing how the machine prints their Notice to Mariners, transmittal copy; it's addressed to the Texas Company, 135 East 42nd Street, New York 17, New York, and in paren,

the numbers forty, which stand for the number of copies that they received.

The COURT. You do not want that in the record anyway, do you Mr. McGovern?

Mr. MCGOVERN. No, Your Honor.

The COURT. No, I mean the part that he has just read.

Mr. MCGOVERN. That happened to be an original portion. Mr. Ricciardi was the—scribbled in this here as being the manager of the Marine Department.

The COURT. Of the Texas Company?

Mr. MCGOVERN. Yes, sir; probably in January, 1950.

The COURT. I thought he was one of those two who you said—

Mr. MCGOVERN. No, Your Honor, they——

[61] The COURT. They were not included in Texas?

Mr. MCGOVERN. No, Your Honor.

By Mr. MCGOVERN:

Q. Would you turn over to the next page, which is page 22, and take your attention to it. There are two notes which being 2/13/50, which I understand is February 13th, 1950.—A. Yes, sir.

Q. Would you read those two notes and explain what they represent?—A. Yes, sir. Note, on 2/13/50 we moved E. M. Anderson, Jr., the Texas Company, Marine Department, 2610 Royster Building, Norfolk, Virginia, and parenthesis 3. And note, 2/13/50, add W. B. Sawyer, the Texas Company, Post Office Box 232, Beckley Station, Norfolk 6, Virginia, and in parenthesis numeral 3.

Q. What did numeral 3 mean?—A. That means the number of copies that they received, sir.

Q. Was the Notice to Mariners, which is Government's Exhibit 8, for identification, sent out in the usual way?—A. Yes, sir.

Q. To the persons who are listed on the mailing list, which is Government's Exhibit 9 for identification?—A. Yes, sir.

Q. Did that include the Texas Company?—[62] A. Yes, sir.

* * * * *

Cross-examination by Mr. BRUSH:

Q. Mr. Partridge——A. Yes; sir.

Q. Have you looked at your records or is there any way you can tell when these Notices to Mariners were mailed?—A. When they were mailed, sir?

Q. When?—A. Well, the custom was to have them all in the mail by about sixteen hundred or 4:00 p. m. on the date that they were issued, sir.

Q. Do you know whether that was done on this occasion?—A. I am sure that it was, sir.

Q. But you have no records to indicate that?—A. No, sir; I don't.

Q. That was only the practice?—A. That was the practice, sir.

Mr. BRUSH. That is all.

Excerpts From Testimony of Marvin O. Rice, a Witness for the Government

[63] Direct examination by Mr. MCGOVERN:

Q. Please give your name and your home address, and speak up.—A. My name is Marvin O. Rice. I live at Deale, Maryland.

Q. Where are you presently employed?—A. I am employed in the Navy Hydrographic Office at Suitland.

Q. In what capacity?—A. I am head of the Nautical Information Branch of the Division of Maritime Safety.

Q. Do you also have a merchant marine license?—A. Yes, sir; I am a licensed master mariner.

Q. How long have you held that license?—A. Since 1943, sir.

[64] Q. Where did you go to nautical schools?—A. Massachusetts Maritime Academy.

Q. Have you sailed in and held a position as a merchant mariner under your license?—A. Not in the merchant marine, sir, but I was master of a Government fishery research vessel.

Q. Have you at my request looked into the preparation and dissemination of what is marked as Government's Exhibit 10 for identification?—A. I have, sir.

Q. Will you tell us about it?—A. One of our functions is, of our branch, is to disseminate timely warnings to shipping that come to our attention. We use several media in doing that, depending upon the urgency of the information that needs dissemination. We disseminate our most urgent information by a system of radio navigational warnings known as HydroLant. They bear that trade-mark to indicate that it is a Hydro warning and that pertains to Atlantic. In the Pacific we operate a similar system known as the HydroPac. We use that system to broadcast notices of naval exercises, firings, underwater tests, submarine operations, deficiencies in aids to navigations; that would include lighthouses being out of order, buoys off station, and similar material. In this particular case we have a HydroLant unnumbered. The difference between a HydroLant [65] unnumbered and a HydroLant numbered is that the unnumbered series include information of a temporary or a temporal nature. Numbered HydroLants are simply permanent, more important or even permanent in nature. In other words, those must be filed and kept on record until cancelled. The information is broadcast from the major Navy radio stations at Annapolis. It is known as NSS Navy Radio Wash-

ington. The transmitter is at Annapolis. We also add such other radio stations that might be necessary to give complete dissemination to the information depending upon the nature of it.

This particular warning is a HydroLant unnumbered. It is the date time group twelve, fourteen, forty-two Zebra. Zebra stands for Greenwich mean time and it was sent to Navy Radio Washington for broadcast on the sixteen thirty Zebra schedule and the 0 four three 0, indicated for two broadcasts, and it was also broadcast on a special Navy schedule known as the Fox schedule. In addition it was given too as an information copy to the Commander of the Coast Guard District 5 at Norfolk for his information.

Now we received notice of this firing, our authority at least, for issuing this, was a dispatch received from the Commander of the Fleet Training Group, Chesapeake Bay, date time group was zero eight one five zero zero Zebra and I will read the text of the broadcast.

HydroLant unnumbered Area A. Virginia. Offshore. [66] Day and night firing and fleet operations on thirteen, fourteen and seventeen November in area bounded by latitude thirty-six forty-seven north, and thirty-six thirty-four north, and longitude seven four three 0 west, and seven five three 0 west. Similar exercises on sixteen November in area bounded by latitude three seven three 0 north, and three seven zero two north, and longitude three seven four five west, and seven four four five west.

That is the end of the broadcast.

Q. Now when was that broadcast sent out?—A. It left our shop—you mean when was broadcast or when it left our office?

Q. When it left your shop.—A. It would have left our shop at fourteen, twelve fourteen forty-two zero

because the date time group is included at the time it goes on our teletype machine.

Q. You have not told us about your teletype machine.—A. In our office we have a teletype printer and receiver. It is known as a tributary station in the NTX communications system. Teletype tapes are punched by our operators and feed into our tributary machine which in turn transmits via wire line to what is known as a minor relay station. That minor relay station serving us is the Navy [67] Gun Factory in Washington. They in turn transfer that tape to another circuit for transmission to a major relay station, which is Main Navy Radio, Washington. Main Navy Radio in turn repunches a tape and converts the teletype code to the Morse Code so it can be transmitted from a radio station to enable it to be copied by ships at sea in the Morse Code.

Q. Now I call your attention to—from 2:—it says, from HydroWash D. C. to all ships and stations/1630 Zebra and 0430 Zebra.' Now what is the 1630 Zebra broadcast?—A. 1630 Zebra broadcast would be on the twelfth and local time would be five hours earlier, so that that would mean 11:30 A. M., Eastern Standard Time on the twelfth.

Q. Is that a regular time for Hydrographic broadcast?—A. Yes, those are regularly scheduled time and published in 205 and Hygrographic Bulletin.

Q. By 205——A. HO205.

Q. What is it?—A. That means HO—0430 at Greenwich and that would be 11:30 local time of the previous evening, that is, on the twelfth.

Q. 11:30 P. M.?—A. 11:30 P. M. Eastern Standard Time on the twelfth.

Q. All right. [68] Now did this broadcast go on out?—A. Yes, it did because in the event that an item would miss the transmission on the broadcast, we are

always notified by a service tape so that it gives us time, if the operation is still in advance to rebroadcast it on a later schedule. That is routine.

* * * * *

The COURT. Captain Rice, let me get that clear. The broadcast of that unnumbered HydroLant went out at first at 11:30 A. M. November the twelfth?

The WITNESS. That is correct, sir.

The COURT. Then again at 11:30 P. M.?

The WITNESS. That is correct, sir.

* * * * *

Excerpts From Testimony of Paul A. Wells, a Witness for the Government

Direct examination by Mr. MCGOVERN:

* * * * *

[103] Q. In November 1952, were you in the United States Navy?—A. Yes, sir.

Q. Aboard what vessel were you serving?—A. U. S. S. *Ruchamkin*.

Q. In what capacity?—A. Radar man.

Q. Were you in the radar room of the *Ruchamkin* on the night she had a collision with the tanker?—A. Yes, sir.

Q. When did you go on watch?—A. At twenty-four hundred. Two four o four.

Q. Well, be the midnight to 4:00 A. M. watch?—A. Yes, sir.

Q. What part of the equipment did you man?—A. Well, the watch was rotated. I was on the gear awhile and then the radio system.

Q. So that part of the time you'd be on the gear and part of the time you'd be the radio system?—A. Yes, sir.

* * * * *

[104] Q. * * * Did you during that evening in your radar room, have any plot on the vessel with which you collided?—A. No, sir; not that I recall.

Q. What was the first notice which you had that your vessel was likely to have a collision with the stranger vessel?—A. When we were struck.

* * * * *

Q. When you were in the radar room was the radar equipment being used to obtain ranges and bearings off the guide vessel, the *Fremont*?—A. Yes, sir.

* * * * *

Q. Did you have any apprehension that from any means, [105] whether from your radar, or from the Communications net, or elsewhere, that there was a stranger vessel which was going to endanger your vessel?—A. Not that I recall, sir.

* * * * *

Excerpts From Testimony of Robert E. Gorenc, a Witness for the Government

Direct examination by Mr. McGovern:

* * * * *

[130] Q. In 1952 were you in the United States Navy?—A. Yes, sir.

Q. Were you assigned to a vessel called the U. S. S. *Ruchamkin*?—A. Yes, sir.

Q. In what capacity were you serving in November 1952?—A. I was a radar man.

Q. What experience had you had at that time in being a radar man?—A. Well, I had approximately three years in the Navy at that time, most of which was in radar and aboard ship.

* * * * *

[131] Q. Now, were you in the radar room of the *Ruchamkin* at the time she had the collision with the tanker *Washington*?—A. Yes, sir.

Q. What was the first notice which you had that there was a stranger vessel which was going to collide with your vessel?—A. Well, no notice, until the collision actually occurred.

Q. Would you tell us how the radar room of the *Ruchamkin* was set up on this particular night and how the work was being done?—A. Well, there was a three-man watch at the time, consisting of Wells, Hirshman, and myself. Hirshman at the time the collision occurred was on the scope of the SU radar, and Wells was on radio telephone and I was plotting.

Q. How big is this radar room?—A. Well, it's rather small, quite compact. I would guess possibly no more than twelve by twelve.

Q. Now was there anybody who was writing up the contact logbook as the contacts occurred?—A. They were being written up, but I can't say— sporadically.

Q. Were you getting images, echoes on your radar?—A. Yes, we were.

Q. Was the radar working?—[132] A. Yes sir; it was.

Q. What was the type of radar you had?—A. Well, it was SU-2, I believe. Surface search, for that type of vessel.

Q. Do you know what the minimum range of your radar was that particular night?—A. I believe the minimum range had been working at its best capacity, was around three hundred yards.

Q. So that anything inside of three hundred yards you would not have picked up on your radar?—A. No.

Q. Were you plotting ranges and bearings at the time of the accident?—A. Yes, sir.

Q. Ranges and bearings on what vessel?—A. Well, we were giving particular attention to maneuvering on station and we were ranging off the guide, which would be the *Fremont*.

Q. And when you ranged off the *Fremont*, did this require that the antenna be stopped?—A. Yes, sir; it did.

Q. Were you able to pick up on your radar the vessels in the formation which you were going to join?—A. Yes.

Q. Were they more or less where you expected them to be?—[133] A. Well, we were missing one vessel because we had taken a PIP count to determine the formation.

Q. You were one vessel short?—A. Yes, sir.

* * * * *

Q. * * * That was the *Carter Hall*, was it not?—A. That was established later. It was the *Carter Hall*.

Q. At the time, you didn't know about the *Carter Hall*, had been in the formation order and was cancelled out after you left the port?—A. Yes; that's correct.

Q. You already established there was one ship less in the formation that you had than you expected to find there?—A. Yes; that's right.

* * * * *

Testimony of Commander I. L. McNally a Witness for the Government

[166] Direct examination by Mr. McGovern:

Q. Commander, would you please give your full name and your home address?—A. Commander I. L. McNally, 415 Crosswoods Drive, Falls Church, Va.

Q. Commander, where did you go to college?—A. The University of Minnesota.

Q. What degree did you get there?—A. Bachelor of Electrical Engineering.

Q. Thereafter did you join some Government service?—[167] A. For a short time in the Army and then in the Navy.

Q. Now what year was it you were a short time in the Army?—A. 1931.

Q. And were you transferred from the Army to the Navy?—A. Late 1931, on active duty since then for twenty-four years.

Q. Now your education was that of an electrical engineer when you joined the Army?—A. Yes, sir.

Q. And when did you begin to be trained in radar or the branch of electronics which eventually worked out as radar?—A. 1936 at the Naval Research Laboratory.

Q. Were you one of the first officers ever to be trained in radar in this country?—A. In 1940 I was one of the first six.

Q. First six. In 1936 was there anybody else?—A. That was just preliminary training.

Q. Have you been a delegate to any international convention?—A. I represented the United States Government as a technical adviser to all the preliminary conferences on international aids to marine navigation at London and at New London, Connecticut.

Q. How long have you been engaged in the planning and [168] development of radar devices?—A. About fifteen years.

Q. Have you played any part in the planning and development of the radars which are referred to as having been on the *Fremont* and the *Ruchi akin*?—A. Yes, sir. Specifically the SU and the SG's. They were my responsibility.

Q. When did you plan the SU?—A. The SU was developed 1942 to 1943.

Q. When was the SG developed?—A. About one year earlier. It reached the fleet in late '42.

Q. Have you testified before as an expert witness on radar?—A. Yes, sir.

Q. In Boston?—A. Yes, sir.

Q. In front of Judge Sweeney?—A. Yes, sir.

Q. Are there limitations upon radar as a means of detecting surface objects?—A. Yes, sir. This is one of the most important points that we tried to bring out at these international conferences, and at the trial you referred to, that radar is not infallible. In fact, there are many limitations and even [169] under the most skilled interpretation of the picture, it is still possible for targets to come upon you without ever detecting them, and this has happened even in targets as large as icebergs. The reasons for this are both technical and operational and will escape even the most expert observer at times.

Q. Now do you have any particular examples of effects which will escape the more expert observer?—A. Well, the general depreciation of the radar performance is a slow order affair, and unless periodic tests are constantly made, you will not be aware of this. And even in the period of operation you may have a critical circuit like the automatic frequency control which was on the SU radar, might go out of operation and certain sectors of it, as a mast, would be completely blanked out and on the larger ships where we had multiple radar installations, why this condition is usually noticed. The international aids to maritime navigation was aware of this and under no circumstances did they want to have radar listed as other than a collision aid and not as a prevention device, and that point was very strongly stressed. Quite a few of the modern ocean liners that are now equipped

with radars have seen fit to put two on just to assure themselves of this extra insurance against these failures which are very hard to detect.

Q. Now why are the failures hard to detect to the [170] ordinary observer?—A. Well, it would take the top notch, experienced man with extensive test equipment, monitors and so on, to be sure at all times that the radar was in fact performing to its peak of perfection. If you have detected a target, and are concentrating your attention on it, why you will naturally adjust the gain and the various other adjustments on the scope to give you the best response for the target that you are ranging and bearing on. Under these conditions this may be most unfavorable for a target at shorter ranges because it will be obscured in the sea return or the side lobs or the broad response of the equipment, and the choice of range scale quite often is made to give you the best accuracy for the ranges you are interested in to this extent.

I notice one of our manufacturers has now brought out a radar with two range scales to try to overcome this difficulty.

Q. Now getting back to the SU radar, the one which you designed and the one which was on the *Ruchamkin*, are there any limitations on it, on the number of targets which an operating crew can handle?—A. This particular radar had a P. P. I. hand and a scope and one operator reporting detections with the assistance of a plotter; if he's expert, he could keep six to ten targets at a time plotted continuously. We are only requiring even [171] today six targets to be tracked per operator and where there are more targets than that, the watch has to be increased proportionately to handle the total number.

Mr. McGOVERN. Your witness.

Cross-examination by Mr. CRENSHAW:

Q. Commander, is the SG–1A, a bigger or better or more modern radar than the SU?—A. They were both developed at about the same time, one for the larger ships, the SG, and the SU for installation on destroyers and small craft.

Q. Do you say then they would give you about the same type of performance?—A. The SU in terms of bearing resolution and range resolution was a little better.

Q. Now would the SG with a VF repeater give you better performance than an SU?—A. Yes, sir. The VF is a precise P. P. I., and as such enables you to measure ranges and bearings very accurately without stopping the antenna.

Q. So that you can continue your searching while you are actually ranging with that VF on an SG?—A. Yes, sir.

Q. Now we have heard an instrument called the VK, a VK–2. Now is that designed primarily for accuracy ranging [172] and bearing, or is it something to keep track of a number of targets?—A. The VK–2 is the general purpose, a general-purpose radar indicator primarily designed for the air situation and not the surface.

Q. Now what about a VG?—A. The VG was a large P. P. I., primarily designed for thirty-inch display that would automatically display the picture so that it would be readily plotted directly without passing it from the operator to the plotter.

Q. Wasn't that developed in partial at least, answer of the search in the fleet for a practical summary plot?—A. That was its objective. But it had serious limitations in that the radar echoes painted on the screen persisted and after a complicated maneuver

or change of course, the whole scope became confused because the echo persisted on the screen.

Q. Now if you have a VK repeater and if you have a VF and if you have two SG's, can you arrange it so that the VF is on one SG and the VK-2 is on the other SG?—A. Yes, sir.

Q. By doing that would you then be able to combine your ranging and bearing at long range with whatever necessary short range work you had to do?—A. It would be possible with adequate trained personnel. [173]

Q. Suppose you had a condition of sea return on one of these instruments, specifically the VK-2, and you had difficulty seeing the contact within your formation, but available to you at the time you had a VF, and you had two SG's, how would you go about trying to keep tab on these close range ships at the same time you conducted your search?—A. You would adjust the gain of one of them to optimum so that it wouldn't saturate on the close-in targets and thereby you'd be able to detect the shorter range echoes, to detect the long-range targets, you have to advance the gain of the radar set and this naturally brings up the saturation of the close-in echoes.

Q. But with these two sets you could have a combination of both effects at the same time, could you not?—A. Right.

Q. Now, have you ever been on a staff, or a command of more than one vessel at sea?—A. Yes, sir.

Q. Are you familiar with the shepherding or the looking out for all of the ships in the group by the O. T. C.? The fact that he keeps them on station, for instance, and tells them if they're not on station?—A. That's right.

Q. And tells them that they should get on station, if they are off?—[174] A. In general the larger ship,

the command ship will have personnel available for the specific functions of maintaining a surface surveillance and an air surveillance and all the other detailed requirements, whereas the small ship may only be able to take care of himself and keep his position.

Q. Are you specifically familiar with the C. I. C. arrangement on the U. S. S. *Fremont*?—A. No. No, sir.

Q. Commander, we have been drawing some pictures up on this blackboard, which are in no way to scale, or by no means accurate. However, they are suggestive of a situation.

Now, assuming, sir, that this is a vessel, and these are likewise vessels, arranged around it, at a range of one thousand yards. They are on a circle, that in front of these at a position thirty-three degrees to the right and thirty-three degrees to the left of the main course, at a range of thirty-seven hundred yards, are two small screening vessels, A. P. D.'s, or destroyers; and then out to the wings seventy-five degrees around on this side, and seventy-five in that, and fifty-nine hundred yards away, are two more screening vessels; now assume further that from behind the formation your ship is approaching with a SU radar. Now we don't know in this hypothetical situation exactly how far away this ship is from these ships, but just as an estimate, assume that it was a four to five thousand yards from the center of that [175] group; assume, if you will, sir, that there is another contact or vessel some five thousand yards ahead of the group in approximately this position. Now in our assumptions this vessel would be at least a thousand or fifteen hundred yards away from this screening ship. Now if you were in the C. I. C. on this approaching vessel, and if you had that formation showing on your P. P. I. scope, would it be probable that the contacts,

the northernmost point, dot, would appear on that scope?—A. Echo, probable that it would appear. This doesn't assure any probability of its being noticed though, if you had your attention concentrated on the screen.

Q. Then the reason for the failure of detection would be perhaps a misapplication of attention?—A. Not necessarily. If you—a limit to what one person can collect on the P. P. I. scope, and I point that out as being somewhere in the neighborhood of six to ten targets that he can efficiently keep track of and report, especially when they were moving at the speed that you have listed here.

Q. Now suppose this person, or you, on this approaching vessel knew the assigned position of these vessels, these ten here, and you furthermore knew and your observations verified the fact that they were not moving substantially with relation to one another: would that increase, or decrease the probability of detection of this extra contact?—[176] A. That would increase the possibility of you observing this new echo.

Q. You have said that there is a limit to what a man can watch and that he can plot, say, something, six or ten contacts. Now is this knowledge of yours that you have to that; do you think that that is a pretty specialized knowledge, or what? Would that be shared by a great number of naval officers?—A. Be a great number of naval officers, nearly all C. I. C. officers.

Q. Would it be?—A. Are trained in this particular art of plotting from P. P. I. scope.

Q. Would an officer who had reached such an attainment as to be entrusted with the command and responsibility for these ten vessels be presumed to have that knowledge?—A. Yes, sir; nearly all com-

manding officers are given a course in the capabilities and the limitations of C. I. C.

Mr. McGovern. May this witness be excused, Your Honor?

The Court. Let him be released.

Excerpts From Testimony of Charles N. Day, a Witness for the Government

Direct examination [181] by Mr. McGovern:

Q. Captain, what is your name and your home address?—A. Captain Charles N. Day, U. S. Navy, U. S. Naval Station, Green Cove Springs, Florida.

Q. Now when were you graduated from the Naval Academy?—A. 1926, sir.

[182] Q. Were you in command of a naval group, or other organizations which were engaged in Operation Seascape?—A. Yes, sir.

Q. Please explain what your command was and how your command was designated and the limitations on your command.—A. I was in command of the Task Force operating under Operation Seascape, and on the night in question I was Commanding Officer of the movement element which consisted of a main body of six ships, and a screen of four ships. We were proceeding from Little Creek, where we had held an operations, rehearsal operations in the afternoon to see the afloat phase of this Seascape Operation, and this was the phase preceding the landing assault to be held the next morning.

Q. Now where were you and your staff physically located?—A. On the tactical bridge of the *Fremont*, which is the highest bridge on the *Fremont*.

Q. What kind of a ship was the *Fremont*?—A. She was an A. P. A., fitted up as a secondary command ship.

Q. Now what was the relations between you as the flag and the *Fremont* as the ship?—A. The ship operated as a unit under my command as all other ships, except that I had the complete tactical [183] control circuit on the tactical bridge.

Q. Did the *Fremont* continue to have her own commanding officer?—A. Yes.

Q. Was he still in command of the ship?—A. Yes, sir.

Q. Was he still responsible for the safety of his own ship?—A. Yes, sir.

Q. Now how was the C. I. C. of the *Fremont?* Was that attached to the flag or attached to the ship?—A. It was attached to the flag, sir.

Q. Now where were you yourself standing at the time that you first became aware of the ship which later developed to be the tanker *Washington?*—A. I was on the bridge when my staff officer, Lieutenant Nelson, called my attention to a light that he could just barely make out, and I went over and couldn't see it at first, and then finally picked it up with my eight fifty binoculars, eight power binoculars. We at first couldn't make out what it, what the color of the light was. We finally determined it was green. I then proceeded to give orders to C. I. C. to start tracking this target.

Q. About how far did this green light appear to be when you picked her out with the binoculars?—[184] A. From previous experience with an eight power binoculars I judged it to be seven to nine miles.

Q. Now at the time she was sighted, where did she bear from the *Fremont?*—A. I am not sure of the exact bearing right now, but it was, I believe it was on the port bow, a little bit ahead of the beam.

Q. Now was she on the same bearing with respect to the other vessels under your command?—A. Some

of them may have been in line with the *San Marcos*. I believe it was over on the port side while we were on two five seven.

Q. Now did you continue to observe the vessel which later turned out to be the tanker *Washington*?—A. Yes, sir; I observed the vessel visually most of the time during her track ahead of the two left ships of the screen, through the screen until she had cleared ahead of the *Capricornus*. She was visible nearly all that time, and became more visible as she approached into the formation.

Q. Now what course was your formation on at the time you first observed this tanker?—A. We were on two five seven, or coming to two five seven. I think we were on two five seven.

Q. Now the course you had been on before you were on two five seven was also a westerly——[185] A. Two seven o.

Q. Had you been on two seven o long; more than five minutes?—A. We came to two five seven, I believe at zero one five zero. And I believe we came to two seven zero at about zero one one five.

Q. Now what reports, if any, did you receive from your C. I. C. with reference to this vessel which you could see visually yourself?—A. Shortly after I had sighted the light and made sure it was a red—a green running light, we, I ordered C. I. C. to start a track. And shortly afterward, I would imagine two or three minutes, we got a report, collision on the *Capricornus* at zero two o nine, I believe it was.

Q. That was a prediction now. Did you continue?—A. That was the initial report that I got from C. I. C.

Shortly afterwards, I would say two or three minutes, we got the report that the tanker, or the crossing ship, would clear that the screen, and that the

C. P. A., I think, would be at three-twelve, seventeen hundred yards from the guide.

Q. What, if anything, did you do with respect to this stranger vessel which was coming into your formation from your port hand?—A. Well, at least, I was very apprehensive. The ship [186] presenting its green running light, as it had, and apparently in a crossing situation, kept my undivided attention. As we say in the Navy, sweated it out. I thought that the crossing ship would turn, stop, or do something to avoid crossing ahead. I repeatedly asked C. I. C. to keep me advised of the track, which they did. Also, my watch officer and I and my chief staff officer could observe the crossing ship from its running lights. Its running lights became visible as it approached toward the left-hand ship of the screen. It did not change even after it had passed the left-hand ship of the screen.

I thought it would still take avoiding action, but it kept crossing ahead of the screen. During this time I was also advised by my junior watch officer, Ensign Gilliland, who was running a grease pencil track on his remote, or repeater scope on the tactical bridge; I was being kept advised of him, of the TAC, his track there locally agreed with the transmitted track, the information that I got over the intercommunications system.

Besides all of this, why, you could actually see the ship, or its lights, as it progressed ahead of the two screen ships through the screen and most certainly as it passed ahead of the main body and ahead of the last, or ship nearest to the track, the *Capricornus*.

Q. At what point did you decide that the vessel was not [187] going to turn away and you would have to take avoiding action?—A. That is hard to say. My intentions, as the track continued, was to take avoiding action after the ship had passed the screen. I

think—I knew my main body was more vulnerable and, of course, at that time I had no way of knowing what this ship's intentions were. They might have turned right into my main body.

Q. Go ahead.—A. The ship did continue on its track. In radar, as we noted it and the reported track, we detected no change of course on the part of the crossing ship. After the ship had actually passed through the screen, it was between the main body and the screen; and I verified this by C. I. C., by our local, remote, repeater, radar scope and by visual on the binoculars, both by me, my staff, duty officer and my chief staff officer. After she had passed the screen I took what I considered extremist action and slowed speed, I believe at about two o four, to eight knots and less than a minute later, feeling that I had not taken sufficient action, I slowed to five knots.

Q. Was this action successful? Did it——A. Yes, sir; as far as I know all ships answered, and we did clear, I judged, that we were cleared the *Capricornus* by five to eight hundred yards, and I considered it necessary [188] as an avoiding action.

Q. Now when did you first hear of the *Buchamkin?*

The Court. Just a minute, Captain. You say you cleared the *Capricornus* by how much?

The Witness. I judged by binoculars and C. I. C. reported to me by about five to eight hundred yards, sir.

The Court. That is a distance between what two ships?

The Witness. That would be between the *Washington*, as she passed ahead of the *Capricornus* and the *Capricornus* bearing over on my starboard bow.

The COURT. You meant you cleared the *Capricornus*, and the tanker by that much; not your ship?

The WITNESS. Yes, sir. No, sir.

By Mr. McGOVERN:

Q. Thank you.

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[189] By Mr. McGOVERN:

Q. Captain, did you have any signal men on the *Fremont* challenge the tanker as she went by?—A. Yes, sir; after the crossing ship had passed ahead of of the *Capricornus* about two or three minutes later, I ordered that the unknown ship be identified by signal. She was signaled to and I got the report that there was no answer.

* * * * *

Q. Now, Captain, had you seen or had you received from your C. I. C. any report as to the location of the *Ruchamkin* at the time that this stranger vessel went through your formation and went in front of you?—A. No, sir.

Q. Had you requested your C. I. C. to get you a range and bearing on the *Ruchamkin* previous to this?—A. My memory is that I had, sir.

Q. And?—[190] A. I also asked my chief staff officer to check with the screen commander, I believe, regarding the position of the *Ruchamkin*.

Q. Did you get a bearing back from the screen commander?—A. I got one message, sir, bearing zero six five.

Q. Did they give you the distance?—A. No, sir.

Q. When did you see the *Ruchamkin* in the period between the time after the approach to the collision?—A. I personally was unaware of the approach of the *Ruchamkin* or her position until the time of the collision.

Now you have read the testimony of Smith, the part-time lookout and part-time helmsman of the tanker *Washington*, have you not?—A. Yes, sir.

Q. Now I call your attention to the fact in Smith's testimony he refers to two changes in course and in your testimony you said that on your observation the tanker did not appear to change course.—A. That's right. From my look at the ship through my binoculars, I could not detect any change of course, nor was it reported to me from C. I. C. or from my bridge repeater.

* * * * *

[191] Cross-examination by Mr. Crenshaw:

* * * * *

Q. You were, as I understand, stationed aboard the U. S. S. *Fremont* and——A. Yes.

Q. And did you have a staff with you?—A. My chief staff officer, my watch officers, senior staff watch officer and a junior staff officer were on watch on the bridge at the time. My entire staff was with me on [192] board ship.

Q. I understand that you were embarked on this *Fremont* with approximately ten officers and some fifteen enlisted men. Is that more or less correct?—A. That's right.

Q. When you go aboard the *Fremont*, you, I understand, are the overall officer in charge of all of the ships engaged in this formation in this maneuver?—A. I am the officer in Tactical Command.

Q. In Tactical Command. Now the *Fremont*, of course, is subject to your orders, as the other vessels are?—A. Yes, sir. That is an individual unit, sir.

Q. Is it not correct that when the flag is embarked upon a vessel such as the *Fremont*, and yourself, that the communication facilities are taken over and are responsible to the flag?—A. We have operational con-

trol of the communications department and C. I. C., sir. The ship maintains administrative control, housekeeping and——

Q. And they have, maintain the housekeeping control?—A. Yes, sir; administrative control——

Q. Right. Now Captain Day, you're in this position which is a little bit different, or may take a little explaining for us to get. Do you have a command responsibility, do [193] you have a duty, or do you have an authority over these vessels——

Mr. McGovern. I object to the question. The question confuses three kinds of things. Now if the Captain is being asked about his military duties and clearly military duty, I have no questions. If he is asked what his military authority is, I have no objection, but this is a very important part of the case and I want the question to be perfectly clear.

The Court. Suppose you break it down.

By Mr. Crenshaw:

Q. Captain, you have authority over the vessels under your command, do you not?—A. As they are assigned in this particular operation; yes sir.

Q. And what vessels were assigned to you by the Operation order?—A. The main body consisting of the *Fremont*, *Newport News*, *Glynn*, *Capricornus*, *San Marcos*, *Carter Hall*, which was absent, not with me during the maneuver, and the four ships of the screen, *Corry*, *Lloyd*, *Hollis* and *O'Hare*, and the missing *Ruchamkin*, which was also absent.

Q. They were assigned to you by the Operation order?—A. That's right. I was the overall commander of the [194] movement.

Q. The officer in Tactical Command of those vessels?—A. Yes, sir.

Q. Did the plan contemplate that the *Ruchamkin* would depart at about the time you sailed from

Norfolk on some independent mission?—A. That's right, sir.

Q. And was she, according to the plan, the Operation order, scheduled to rejoin your formation by midnight?—A. Yes, sir; twenty-four hundred, I believe it was.

Q. Now do you dispatch the *Ruchamkin* on this mission, or do you know when she leaves on that mission? Are you informed in any way that she's gone on her mission, doing what she's supposed to do?—A. Yes, sir.

Q. And when she comes back and reports back, are you informed of that?—A. I normally would be; yes, sir.

Q. Do you have an organization aboard your vessel to handle the communications from the various ships coming to you, whether they are reporting C. I. C., radar information, or other types of information; there's a way that that information gets to you, as the senior officer, as the top commander here?—A. Most generally; yes, sir. I would say your C. I. C. [195] information, breaking it down, would come up to the tactical bridge, to the officer of the watch, or to me, if I were on the bridge.

Q. Now, are you not responsible to see that such an organization exists?—A. Yes, sir.

Mr. McGovern. I object, Your Honor. Responsible for what?

Mr. Crenshaw. The witness has answered.

Do you want me to rephrase or repeat the question?

Mr. McGovern. Yes.

By Mr. Crenshaw:

Q. Are you responsible to see that such an organization is in existence on your flagship?—A. It is a part of the commander's, of the transport division, commander's responsibility to see that his various depart-

ments are functioning, is responsible for it. The detailed checking up, that is something different, of course.

Q. That is correct. Now as a commanding officer of a private vessel, I mean an individual vessel, for instance, the *Capricornus*, that officer, the commanding officer is responsible for the *Capricornus*, is he not?—A. That is right, sir.

[196] Q. Now if he delegates some of that responsibility and the person to whom he delegates it, such as the Officer of the Deck, if he does something wrong, does that relieve the commanding officer of his responsibility?—A. No, sir.

Mr. McGovern. I object.

The Court. What is the ground of the objection?

Mr. McGovern. Legal conclusion.

The Court. I think the Captain is qualified to answer.

Mr. McGovern. I would like to have the Captain specify whether he is talking about legal responsibility or military responsibility, and I think the record ought to be clear on that.

The Court. I think it is plain what the question meant.

By Mr. Crenshaw:

Q. Captain, you obviously can't attend to all of the details of running an organization such as this task group.—A. That is right.

Q. Therefore, you have the staff, and you have radio communications to pass whatever orders you have for the various vessels to those vessels.

Now do you personally transmit those messages?—[197] A. No, I might have originated them, but I don't personally transmit them over the voice.

Q. You don't pick up the radio telephone and call them out?—A. No, sir. We have telephone talkers.

Q. When messages come in, if you were on the wing of the bridge, or some place, and the wind were blowing and you didn't hear them, does someone write them down and take them to you, or tell you about them?—A. I would say normally they'd be transmitted. If they were voice radio messages, first by voice, if there was any interference, or if I were in my cabin, or some place like that, they would write them down and deliver them.

Q. When a message comes in to the flagship addressed to you, as the O. T. C., you have an organization, have you not, to see that either you or your representative on duty is made aware of that message?—A. That's right, sir.

Q. And that organization was functioning on the night of November 14 or the early morning of November 14?—A. Yes, sir.

Q. Captain Day, in this organization in the operation of this naval practice exercise, did you have a subordinate commander, an officer that had more than one vessel under his control that was subordinate to you?—[198] A. Yes, sir. The screen commander, Captain Persons, had the screen, and he was delegated authority as tactical commander of the screen.

Q. Now that officer is on the U. S. S. *Hollis*, was on the U. S. S. *Hollis*?—A. That's right.

Q. Now I assume, am I correct in assuming, that he had a staff, perhaps not of the same number, but a staff somewhat similar to yours that was embarked upon the *Hollis*?—A. That is right, sir.

Q. And he issued his orders to those vessels in the screen from the *Hollis;* is that correct?—A. Yes, sir. All of our maneuvering signals were transmitted and answered for by each ship in the main body and by the screen commander. The screen commander in

turn transmitted those tactical signals to ships in the screen with him.

Q. So that if you were to slow that formation down or change that formation's course, tell me how you would go about doing that? What vessels would you cause to have called on the radio?—A. Signal would go out over the primary or secondary tactical, or warning circuit to all ships of the main body. It would have a common call sign for the movement element including the screen and the main body. The answering up would [199] be done by the ships of the main body and by the screen commander.

Q. And then what was done to see that the screening ships also had the message?—A. The screen commander was responsible to see that the tactical signals were sent to the screen.

Q. Suppose you ordered the formation to change course, say, from north to the left to two seven o, a ninety degree course change; suppose that you sent the message out in the manner that you have just described and all of a sudden you looked out either by eye or by radar and you saw the screen was proceeding on the former course that they hadn't changed course, what would you do then?—A. Would you repeat the question?

Q. Suppose you issued the order to the main ship, the ships in the main body, to turn left ninety degrees, and your ships turned left but you observed that the screen did not turn left. Now what would you do? Would you call the screen commander, or call those vessels, or would you just let them go?—A. Having sent the tactical signal to the screen commander, I most certainly would tell the screen commander.

Q. You would see that they obeyed your orders, even if the screen commander didn't get word and didn't tell them, you would see that they did it?

[200] Mr. McGovern. The witness testified——

The COURT. No; he said he would send it to the screen commander.

Mr. CRENSHAW. I couldn't hear the witness.

The WITNESS. I can't contemplate such a situation, but I would.

Mr. CRENSHAW. Of course, you can't.

By Mr. CRENSHAW:

Q. It is far too well organized for that to happen, but if an order is sent out by you, you contemplate not only those ships in your type organization doing what you say, but the screen doing what you say?—A. The maneuvers of the screen might not conform directly to the maneuvers of the main body. Quite often in a course change, the screen must orient to equalize itself on the course of the main body. Normally those maneuvers occur before the basic change of course by the formation. The screen commander is normally given five to ten minutes preliminary notice so that he can dispose his screen according to the new formation course. That is a preliminary operation, sir.

Q. Captain, what I am trying to ask you is when you maneuver your group, you maneuver the entire ten ships, but you leave the mechanics of getting the word to the screen and how they shall do it up to the screen commander. Is that a [201] fair statement?—A. That is right. In this operation that we are referring to, sir.

* * * * *

[202] Q. * * * Now, Captain, the Operations order, as I understand, called for your sailing from Norfolk on a generally easterly course for a time, then turning to the south, and then turning to the beach; is that correct?—A. Yes, sir. Those were the intentions.

Q. Those were the intentions. Now those intentions were expressed by you in your night orders, were they not?—A. Yes, sir.

Q. They were, however, not carried out, were they?—A. They were not. It was not possible to carry them out, sir.

Q. Why, Captain, was it not possible to carry them out as planned?—A. The first part of the evening, in proceeding to the east, we had a squadron of ships, another Operation, naval Operation, to the southward of us and they were in an overtaking position to the south of us, but it took quite a long time [203] for them to pass us, and we were delayed by this particular formation. I did slow down to let them overtake, so that I could make my change to the south and about that time we had targets on the starboard bow again, and we were in no favorable position to turn south then, and we were clear to the north. So I turned north after delay of about fifty-five minutes, I believe.

Q. Now the turn to the north was about fifty-five minutes after midnight, was it not?—A. Zero zero fifty-five; yes, sir.

Q. Then you turned west again, or you turned west to two seven 0?—A. Yes, sir.

Q. That time was approximately fifteen minutes after one, was it; about twenty minutes later?—A. Yes, sir.

Q. Now what was the purpose of holding that northwardly course, that length of time?—A. Well, I wanted to change as soon as I could after I got on a northerly course, and we did, as you mentioned before, have the period there of orientation of the axis. They were given a preliminary order regarding the change to the west, and it took them five or six minutes, I guess, to get oriented and report.

Q. So that you stayed on a northwardly course until [204] your screen had settled down into the new positions?—A. That's right.

Q. Then your turn to the west——A. That's right.

Q. After you turned to the west, you had to go through the same sort of procedure; the screen had to resettle again; is that correct?—A. Yes, sir.

Q. Now then, I understand——A. No, sir. No, sir, the change from north to west, the screen oriented while the main body was on a northerly course, oriented to the new formation course during this period that we were going north.

Q. So it's your understanding that the screen was already oriented to the new course at the time you changed from north to west?—A. Approximately so; yes, sir.

Q. That is your understanding?—A. Yes, sir.

Q. Have you any idea, Captain Day, how long it would take your screen to reorient?—A. We talked that over before the formation, and the screen commander wanted ten minutes, sir. I believe he could do it in five minutes in an emergency.

Q. Captain Day, did he want ten minutes to reorient or [205] did he want ten minutes advance notice of the course change so that he could tell his screening officers that he was going to have to reorient and so they could work out their maneuvering board solutions and be ready to reorient?—A. No, I think it was to include both the preliminary notice and getting——

Q. So your understanding of it is that, bingo, when you changed course from north to west, your screen was oriented ahead of you?—A. Not completely; no, sir. They were in such a position that they would be in an approximate position as we changed course from on the main body with the main body.

Q. Would it surprise you, sir, to know that the logbooks of these various screen vessels and the quartermaster notebooks of these various screening vessels indicate that they changed course sometime between three, four, five minutes before your change and that they apparently continued at courses different from your base course for an appreciable length of time after you were on north, or on west?—A. I would imagine they would be adjusting positions; yes.

Q. So that they would not then have completed their reorientation at the time you changed from north to west, but they would be doing it?—[206] A. That is quite possible; yes, sir.

Q. Now then there came a time after the change from north to west, that you changed course of this formation from two seven 0 which would be due west, thirteen degrees to the left, to a course of two five seven?—A. That's right, sir.

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[207] Q. When you changed that course from two seven 0 to two five seven, do you recall whether or not there were targets ahead of you, either to port, or to starboard?—A. There were none when I gave the orders, sir. We, on the bridge, preceding each change of course search all around the bridge with our binoculars, C. I. C. reports, reports clear, and then we change course. That procedure was used on all changes of courses.

Q. So that——A. On flagship.

Q. So before you would change the course of this formation, you would look to see if it were safe where you were going?—A. Yes, most certainly.

Q. In doing that, you're really operating some sort of super ship, some great big thing, you want to be sure it's clear ahead——

Mr. McGovern. I object.

Mr. CRENSHW. What grounds?

[208] Mr. MCGOVERN. There is nothing in the direct about argument about super ships; answer yes or no about super ships will not help anything. Ask the man about what he was doing.

The COURT. Objection overruled.

Mr. CRENSHAW. Could you answer the question?

The WITNESS. Will you repeat the question?

By Mr. CRENSHAW:

Q. When you changed course from one course to another, like in this case from two seven o to two five seven, and you look ahead to see if it is clear, as you are running this group, this formation, it is more or less as if it were some big super ship, some great big entity that you were, you would look ahead, have to see if it is clear; is that correct?—A. I have to take into consideration the size of my formation; yes, sir.

Q. You're responsible, are you not, Captain, for the safety of every vessel entrusted into your command?

Mr. MCGOVERN. I want to make my firm objection to the use of the word "responsible" where he means responsible as a matter of military necessity—I do this with full assurance that there is a case in the [209] Second Circuit which makes a distinction on the point.

The COURT. If the Captain has any doubt about what is meant by the question, you just so state, Captain.

The WITNESS. As the O. T. C., or the naval military commander, I was responsible for looking out after the safety of ships. Likewise, by naval law each and every individual ship commander is responsible in his own right for looking out after his own ship.

By Mr. CRENSHAW:

Q. And in addition would it not be true that the commander of the screen would also be responsible for his ships?—A. I would say so; yes, sir.

Q. Isn't it further true that the responsibility of the three officers mentioned would not diminish the responsibilities of any of the other three one whit merely because more than one officer shared that responsibility?—A. I am not quite sure that I follow that question.

Q. The fact that the commanding officer of the *Lloyd* is responsible for the safety of the *Lloyd,* does not dilute the responsibility of the commander of the screen for that vessel, does it?—[210] A. I am not sure that I am qualified to answer that question, sir.

Q. Are you familiar with the volume entitled United States Navy Regulations?—A. I think I am, sir. Yes, sir.

Q. Captain, I show you Section 1318 of the U. S. Navy Regulations and I ask you to read that.—A. All persons in naval service on active service, on furlough, on retired list with pay——

Q. Excuse me. Section 1318.—A. Next page?

Q. Right here.—A. Oh.

Delegation of authority and issuance of orders and instructions by a person in the naval service shall not relieve such persons from any responsibility imposed upon him. He shall insure that the delegated authority is properly exercised and that his orders, instructions are properly executed.

Q. Now, Captain, are you familiar also with the provisions of the Navy Regulations that the commanding officer is responsible for the safe navigation of vessel?—A. Yes, sir; that's what I was trying to refer to.

Q. That paragraph, or the provisions in Navy Regulations, that says the commanding officer is responsible for the safety [211] of his vessel—would make the commanding officer, for instance, the *Lloyd* responsible for the safety of the *Lloyd,* would it not?—A. Yes, sir; within his ability to be responsible; yes, sir.

Q. Now the fact that these vessels were entrusted to your command, by Operation Seascape, or the orders that put into effect Operation Seascape would make the *Lloyd* one of your charges, would it not?—A. Yes, sir.

Q. Now the fact that you had delegated tactical or operational control over the *Lloyd* and the other screening vessels as to Captain Persons, would not relieve you of that responsibility, would it?—A. That is right, sir.

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[216] Q. Now what sort of experience had you personally had, Captain Day, in running this sort of a maneuver? Had you done this before?—A. Not with the amphibious type of exercise which was embodied in Seascape. From June until September I had been in operational control of a task group, of a considerable number of ships which operated out of Norfolk and into the North Atlantic waters, Newfoundland, Labrador, Greenland and back over a period of three months. Previous to that, during the war, I was the commanding officer of a flagship which had tactical command of thirty-seven ships on operation out of Guam, sir.

Q. With this background of experience in group operations then, would you say that it was a dangerous thing to have a strange vessel within one of your formations?—A. Yes, sir, it was very dangerous, sir; and it was apparent from the time that the ship

started its approach into the screen, that it was a very dangerous situation. It [217] is recognized universally as a very dangerous situation.

Q. And you recognized on this particular night as a dangerous situation.—A. Yes, sir.

Q. Would you consider that the screen was a part of your formation?—A. Yes, sir; it was a part of my formation.

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[218] Q. On this particular evening when were you first aware of the presence or the location of the *Ruchamkin?*—A. As I believe I said before, at the time of the collision, sir.

Q. Have you made any inquiry prior to that as to the whereabouts of the *Ruchamkin?*—A. Yes, sir; I believe I had about one thirty or [219] thereabouts.

Q. And over what media or how do you make the inquiry and of whom did you make such an inquiry?—A. I believe I asked the Officer of the Deck, the staff watch officer to see if he could find out where the *Ruchamkin* was, sir.

Q. And did he do that?—A. He reported to me a signal. I think it came from the screen commander that she bore zero six five.

Q. Did you visually sight the *Ruchamkin* at that time?—A. No, sir; the staff watch officer, Lieutenant Nelson, the chief's officer, staff officer and myself looked in that direction and could not see anything, sir.

Q. Now did you all three go over to one position on the bridge and peer out into the darkness to see whether you could see this vessel?—A. I don't believe so. We were just trying to pick it up, sir.

Q. Where were you looking from—I mean did you put your glasses on and search and look?—A. Back on the starboard quarters.

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[220] Q. Did you ask the signalman if they knew where the *Ruchamkin* was?—A. I am not sure whether I did or not, sir.

Q. At any rate, you didn't find out where the *Ruchamkin* was at that time?—A. No, sir.

Q. Now, in the course of this Operation order, I understand, the *Ruchamkin* departed on mission to the beach and according to plan returned to your group. Now I noticed that you described the ships in your formation as having four ships in the screen.—A. That's right, sir.

Q. At the time of the collision. Now the *Ruchamkin* had come back apparently from this mission, and do you know whether she had reported to you?—A. To the best of my knowledge she had not reported to me. It had not been reported to me as the officer in Tactical Command, sir.

Q. Do you know whether or not your Tactical Command organization, your staff, had received a message from the *Ruchamkin* reporting back from her mission?—A. No, sir; I do not. After the operation, in fact, after I had transferred my flag to the *Glynn*, and proceeded on in toward Camp Pendleton, I was apprised of the fact that [221] I believe a movement report had been sent and received. I did not see this movement report. This movement report, as I remembered, was addressed to Commander Amphibious Force Info, the Task Force Commander and the Screen Commander.

Q. Now, Captain Day, what in the world is a movement report?—A. By our Operation orders, as I remember it, it was required that the *Ruchamkin* would report her movement when she had started, completed her reconnaissance mission and was ready to rejoin the Task Force.

Q. And do you think that this was the message that you received?—A. That is my memory, sir.

Q. Now what happened to that message, Captain Day?—A. Well, I couldn't say, sir. As I say, I saw it much later.

Q. Well, now did you discuss this message with the Naval Court of Inquiry?—A. To my memory I did; yes, sir.

Q. Now, I will show you what I understand is a photostatic copy of that question one hundred and five on page 15. Now, Captain, would you read that question and that answer to the Court?—A. This is a hundred and five, did you say, sir?

[222] Q. Yes, sir. A. Question: If you would, Captain Day, would you read the sender, action, addressee, info addressee on this report and read the text? Answer: This is from U. S. S. *Ruchamkin* to ComPhibLant Information Ct. Ctg, or Ctd22—I believe it is—ComTransConRon-2, 140642Z RUCHAMKIN—APD — 89 — TA — 86.2 140640Z — unclassified — Deferred.

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[223] Q. Now, Captain Day, what is this that I have read you? Is that the heading, the introduction of a message, a Navy message?—A. That is right, sir.

Q. Does that tell you who sent it and who it was sent to?—A. Yes, sir.

Q. Now could you look at this and tell me who did send it and in sort of English rather than Navy designation tell me who it was sent to?—A. As this is reread, it is from the *Ruchamkin* to ComPhibLant. That is my senior. It is the Commander, Amphibious Force and information to me, as the Task Force Commander, and to ComTransConRon-2, who is the administrative commander, who was in command of the screen, this being his administrative——.

Q. That would be Captain Persons?—A. That's right.

Q. So that it went to ComPhibLant, your senior, yourself, and Captain Persons?—A. Yes, sir.

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[224] Q. And do you recall what the Operation order said about what the *Ruchamkin* must do when it comes back, with respect to you?—A. No, sir; I can't quite recall any specifics, but normally a ship reporting to rejoining a unit will report for duty and get instructions as to the composition of the force [225] and will proceed carefully, clear of the formation in a safe manner and when in position will report that they are in position, sir.

Q. Now, Captain Day, you say they will proceed in a safe manner. Is this proceeding into a group, an exercise involving some additional hazard to ordinary steaming information?—A. Yes, sir; I think that is very apparent. A formation at sea is liable to change course or speed or maneuver for various reasons. Sometimes emergency reasons, and any units rejoining must rejoin with care and with a thought towards knowing what is going on and being able to conform, if the main body or the formation should change course or speed.

Q. Would you think that it would be normal for the captain to be actually on the bridge when such a maneuver were being undertaken?—A. I would say normally, yes. There might be conditions when he might not be.

Q. To what officer, what vessel would the *Ruchamkin* make this report for duty and request for assignment to station?—A. I would say that he, having been under the tactical control of the screen commander, would feel obligated to make his report to the screen commander, sir.

[226] Q. Then you would expect the screen commander to tell him to go to such and such a station, or to do so-and-so?—A. Yes, that was his delegated authority, sir.

Q. Now when the screen commander did give such an instruction to the returning vessel, would you say then that the screen commander had assumed tactical control over that screening vessel?—A. No, sir.

Q. Is it your thought then that the authority to give an order to a vessel under your command does not carry with it a responsibility for that vessel?—A. No, sir; my thought was that you assume the actual tactical control when a ship is able to conform to the tactical movements of the group concerned. In this instance the screen.

Q. In other words, your thought then would be that the screen commander would have no tactical control over the *Ruchamkin* until the *Ruchamkin* was actually on her assigned station in that screen?—A. That is as far as the formation was concerned; yes, sir.

Q. If the screen, if the *Ruchamkin* got out of position, would she then get out of the tactical control of the commander of the screen?—A. If she had a breakdown, and got so far out that she [227] was not able to conform to the tactical movements, tactical orders, I would say she would be out of the tactical control; yes, sir.

Q. Did this Operation order require the *Ruchamkin* to do anything with respect to your command, the O. T. C., when she rejoined, that she did not do, assuming that this message was sent as the indication is in that question?—A. No, sir; I think not. She, of course, had not gotten into position and she was not under the tactical control of the screen commander.

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[228] Q. * * * Now, Captain Day, the signals that you would send, the tactical signals, change course, change speed, which you have explained that you sent to your heavy vessels, that is, sent over a circuit designated as what, sir?—A. Either the primary or secondary tactical and warning circuits.

Q. Are the screening vessels guarding that circuit, to your knowledge?—A. To my knowledge I believe they were. I think they get the signals over those circuits as well as their screen commons, sir, which they reacted on; yes, sir.

Q. So they hear those messages and then they hear the subsequent message from the screen commander?—A. That is my remembrance on it, sir.

Q. Now, Captain Day, your CIC being the CIC for the flagship, would it have any control over these radar contacts or the dissemination of information pertaining to [229] those contacts?—A. Yes, sir; that is standard procedure to keep your ships and your formations informed of raid designations, the letter designations, and keep them informed of any alerts or any warnings as well as to keep the O. T. C. or the tactical bridge informed of such things.

Q. Then your CIC would inform you of the contacts and would inform the other ships of contacts?—A. That is my understanding of the way it works, sir.

Q. And it was performing that function on this particular night?—A. I think it was, sir.

Q. And all of the vessels in the formation would know it would be doing that, would they not?—A. That is the normal procedure; yes, sir.

Q. They would expect the O. T. C. to broadcast solutions or information concerning contacts over that circuit?—A. Yes, sir.

Q. Now, Captain Day, do you have any recollection of a solution on the contact that developed to be the

Washington to the effect that it was anticipated that the closest point of approach would be collision with the formation?—A. No, sir. The first report that came to me on the bridge shortly after I set them onto this particular target, radar target, was collision course on the *Capricornus* at, I [230] believe, zero two o nine. That is the first report that I got, sir. Very shortly after they started tracking.

Q. That commencement of tracking was about the time you changed course to two five seven, was it not?—A. I think we were on the course, sir.

Q. That would be what time with relation to one fifty, which is when I understand you changed to two five seven?—A. That's right. It may have been at the same time or just a little bit before, sir. We had been looking at the light before I started them tracking, sir.

Q. Uh-huh. And it was about that time, about one fifty then that you had this awareness that this contact, anticipated point of approach to your formation was collision *Capricornus?*—A. I would say two or three minutes after I had started them tracking, sir.

Q. That was about one fifty or thereabouts?—A. One fifty-three, something like that, sir.

Q. Now, Captain Day, did that solution change?—A. Yes, sir. I, as the Commander, would not rely on one solution. I most certainly wanted them to keep tracking and to get a standard, steady solution which I did.

Q. Did it change before your speed reduction?—A. Oh, yes, sir. Yes, sir.

Q. You don't think your speed reduction had much effect on it then, do you, or do you?—[231] A. I think the speed reduction was made as a result of knowing where the crossing vessel was going, at least, knowing the approximate track by radar. Most cer-

tainly I had to wait until the ship got through the screen before I could take my extremist action.

Q. So that you couldn't give any instructions to your formation until after the vessel had cleared the screen?—A. That is it. That was my judgment on it. Yes, sir.

Q. You are sure that you didn't do that, or attempt to do that until after she got inside the screen?—A. No, sir; the ship, the *Washington,* was well inside the screen before I reduced. That is by visual and by radar; both.

Q. Captain Day, do you know how far away the *Washington* was at two minutes after two on this particular morning? I am speaking of from the *Fremont.*—A. No, sir; I don't. I don't believe—I can't recollect it here.

Q. Do you have any recollection of a maneuvering board plot, or presentation which was introduced at the Coast Guard hearing and which has been attached to the Government's Answers to Interrogatories in this case concerning that position?—A. Yes, sir; I do. I believe that was the moving, the relative movement chart prepared by Commander Whiting.

[232] Q. That was prepared by Commander Whiting, who was the chief staff officer on your staff?—A. Yes, he was the chief staff officer and with me on the tactical bridge.

Q. Now would you look at that chart, please, sir, and tell me what the range and the bearing was of the *Washington* from the *Fremont* at two minutes after two, according to that chart, that plot?—A. I believe it is about two three five and it shows here about four thousand yards. I can't see the screen here.

Q. The screen wasn't placed on this; but that plot is outside of this dotted circle by this number four, almost to the next dot?—A. Yes, sir.

Q. Now what would that make that range?—A. This being, if this is a thousand yard scale, that would be one, two, three four.

Q. And so some few hundred yards beyond that?—A. Yes, sir.

Q. About forty-three hundred yards, would you say?—A. Forty-two, forty-three hundred on that particular diagram, sir.

Q. Captain Day, do you remember the position of your screening vessels, their locations?—A. Not by exact degrees. I know that the two center [233] screen ships were about thirty-three degrees on each side of the course line, and they were about thirty-seven hundred yards distance from the guide and the two destroyers on the end were about fifty-nine hundred yards, I believe.

Q. Then at two minutes after two, your plot on the *Washington* then would place it some six or seven hundred yards outside the screen, the thirty-seven hundred yard circle?—A. If that is it; yes, this plot that you show me; yes, sir.

Q. Now, Captain Day, when did you attempt first to transmit your message about slowing to eight knots?—A. As I remember the order went out about zero two o five, sir.

Q. Did it go out more or less insantaneously?—A. Yes, sir; it was an execute immediate signal.

Q. And there was no delay about it?—A. No, sir. The *Washington* at that time was well within the screen and that's between the screen and the main body and could be readily seen visually as being there, sir. This was also specifically reported and as inside the screen by C. I. C. and by my, by the ensign on the bridge, who was Ensign Gilliland, who was making the grease pencil plot.

Q. What person in C. I. C. informed you of the position of the *Washington* inside the screen at this time?—A. I couldn't say. It comes over the voice communication [234] system, ship's communication system, and in turn would be transmitted to me from the communication room on the tactical bridge.

* * * * *

[235] Q. Now, Captain Day, this is a fairly important time that we are talking about, and the plot that we have, that I [236] have shown you, has been introduced, attached to the Interrogatories, the Answers to Interrogatories which have been filed on behalf of the Government, and they show the *Washington* outside the screen at zero two o two, and this message, or this testimony I have here in my hand before the Court of Inquiry, indicates that you desire to send that message at two o'clock. Now is there any written contemporaneous source to which we might be referred to clear up the situation?—A. No, sir; I don't know. My whole recollection on the matter is that I was not going to change course or speed rather, until the crossing ship had gotten beside the screen. That was my whole objective and that was what I did and I had my watch officer, my radar people assist me in knowing when it had passed through the screen.

Q. Now when you thought then that it had passed through, you issued this order to slow. Did you contemplate that order included the U. S. S. *Ruchamkin*?—A. No, sir.

Q. Now, Captain Day, if these ships were in approximately this position, and the tanker entered the screen approximately in this position, between the *Hollis* and the *Lloyd*, could you have turned your formation to the left, to ease the situation with respect

to the tanker?—A. I could have turned it with very great danger. I [237] didn't contemplate it.

Q. Would be your danger—did it not occur to you?—A. Yes, sir; I most—it most certainly did.

Q. Were there other contracts over there that prevented you from doing this?—A. We did have radar contacts and visual contacts.

Q. Close aboard your formation?—A. No, sir; not close aboard, but close proximity. It was my understanding, judgment, it was very dangerous to turn. Of course, I had the rules of the road in mind all the time I had this contact; this crossing stranger. He was crossing ahead of me and I could not without laying myself open to fault violate the rules of the road, until it was such a time as he would be endangering my vessel.

Q. Now you're speaking of the rules of the road here. Any particular one you're thinking of?—A. Yes, sir. The rule of the road whereby the ship who has the others on the starboard bow is the burdened vessel, that is crossing, this crossing ship was the burdened vessel. My group of ships were the privilege vessels or the stand-on vessels and I most certainly had that in mind all the time during the approach of the crossing ship and while she was crossing ahead, and ahead of the screen and into it, and ahead of the main body.

Q. Now all of this time, you were talking about privilege, [238] burden, responsibility, as between the *Washington* and your formation; that is the way you viewed it, was it not, Captain?—A. Yes, sir; as between the *Washington*, my formation and each individual ship in which she violated the rules of the road and crossed ahead of.

Q. Now you speak of this privilege situation, doesn't the rule to which you have referred as the

starboard hand rule require you to maintain course and speed?—A. It does, yes, sir; except in the extremest condition where you know your ships are in danger.

Q. Now under your concept of that, you had felt then that the situation had gotten to a point where you could not avoid collision, or the risk of collision except by failing to hold course and speed, by doing something else; is that correct?—A. Yes, sir; I considered my change of course about the safest solution once——

Q. You mean your change of speed?—A. Change of speed once the *Washington* had crossed through the screen. The screen was pretty far apart. The ships were two miles apart or so. And there was, as you saw, the track coming down, you could see there was a chance of coming through without endangering the screen too much. They are highly maneuverable ships. They are all on their own, have their own commands, responsibilities, but this main body [239] with a thousand yards radius was a group of, it was a different situation, and I felt that this crossing ship could be more readily avoided if I slowed. I did consider it extremest action.

Q. Well, if it were extremest action and you were free to do something other than maintain your course and speed, you'd be equally free to turn left, would you not?—A. No, sir. Not with the stranger in our midst.

* * * * *

Q. After the *Washington* entered the screen.—A. To have turned left, I think would have been a fairly dangerous situation too with the crossing ship. You didn't know whether the bridge was awake or whether

they were coursing their crossing path purposefully or purposely or what. I didn't know.

* * * * *

[241] Q. When this message came up about the collision to the *Capricornus*, what sort of message did you send to the *Capricornus* to apprize her of this situation?—A. As far as I know the message went over C. I. net, over the C. I. net. That would be the standard procedure for [242] any information like this, sir.

Q. Was any effort made to see that the *Capricornus* herself knew about this?—A. I don't believe so, sir. I relied on the normal automatic operation of the C. I. net, sir.

Q. Captain, did you have a fair number of contacts out there this particular night?—A. Considerable number which were assigned Raid designations. Yes, sir. In fact, we had gone through all the alphabet, I believe, and were on Fox at the time of this situation here, sir.

Q. Did you notice whether the general direction of movement of any of these contacts——A. None of them were particularly reported to me as endangering the formation, sir.

Q. Were most of them just going up and down the coast?—A. Most of them were. There were several in which we had to slow and at one instance we had a case where I informed it, told the screen commander to order his wing ships to take individual ship action where there might be a contact, close contact on it.

Q. Wasn't that done with the *Washington*?—A. How is that, sir?

Q. Didn't you do just that with respect to the *Washington*?—[243] A. The screen commander did that on his own.

Q. Didn't you tell him to do that too?—A. No, sir; he did it on his own, sir.

* * * * *

Q. Now, Captain, this Operation order provided that the *Ruchamkin* would go off to the beach and then come back and rejoin your formation?—A. Yes, sir.

Q. You knew that she would take a position up in the screen ahead, did you not?—A. Yes, sir.

Q. Do you remember whether you knew which particular screen station she was going to take?—A. No, sir; I don't believe I do. I think that the screen commander had notified me of his intentions of changing to a five-ship screen, sir.

[244] Q. And did he not tell you at that time that the *Ruchamkin* would take station three?—A. I do not recollect it right now, sir.

* * * * *

Q. Captain Day, have you had an opportunity to read over your testimony before the Court of Inquiry?—A. Yes, sir. Yes.

Q. Have you had an opportunity to read over any of the others like Captain Persons' testimony?—A. No, sir.

Q. Captain Persons, before the Court of Inquiry, on page twenty, I believe it is, testified as follows:

"At some time between zero one forty-four, thereabouts, *Ruchamkin* reported for duty. At that time she was bearing zero eight four true from *Hollis* in station one distance nine thousand yards. I told *Ruchamkin* to close formation and be prepared to take her station in the screen when so directed. I also told *Ruchamkin* to [245] expedite closing. I informed O. T. C. that *Ruchamkin* was proceeding to close the screen and that I would tell her to take station, that I would order a five-ship screen and

place *Ruchamkin's* station when she had closed. He asked me for a bearing of *Ruchamkin* from him and I gave it. I believe, as approximately zero six five true from him. The exact range I cannot recall, but it was something like sixty-five hundred yards from the guide *Fremont*, my estimate."

Now do you recall receiving that information from the screen commander? "I informed O. T. C. that *Ruchamkin* was proceeding to close the screen"?—A. Yes, sir; I don't. I recollect a message which said that they intended to form a five-ship screen, sir. That's my recollection.

Q. Now, Captain Day, if you had received this message, did you have or some of your flag officers have a plot of your formation so that the position of the *Ruchamkin* could be ascertained approximately from that message?—A. Yes, sir; I would say we could plot it.

Q. You could plot it and if you had plotted it, would it not show that the *Ruchamkin* was somewhere off your stern or starboard quarter?—[246] A. Yes, sir.

Q. Now further, if you had received this message, would it not have told you that the *Ruchamkin* would proceed to a position in front of your formation in the screen up ahead?—A. Yes, sir.

Q. And wouldn't that position be slightly to the starboard of your board, of your formation?—A. I guess that's where it would be, sir.

Q. Now with that knowledge then, you would have a pretty good idea, would you not, of where the *Ruchamkin* would have to go to get to her station?—A. Yes, sir; if I knew where the *Ruchamkin* was, why I would have known the rest of what you asked me, sir.

Q. But you did not know where the *Ruchamkin* was?—A. No, sir.

Q. Did you ask your C. I. C. to give a plot of the *Ruchamkin?*—A. I personally did not. I don't know what my staff watch officer did. I asked him to get a position several times during the night, sir.

Q. This last information, do you remember what time these requests were made?—A. No, sir. I think about one thirty, when we got the zero six five.

[247] Q. About one thirty. So that from zero one thirty or from the time you got this report from the screen commander until the collision, did you make any further efforts yourself to find out where the *Ruchamkin was?*—A. Not that I know of, that I recollect, sir, about one fifty——

Q. Did you have any of your flag officers do that, staff officers?—A. I can't recollect that. I think we were looking for the *Ruchamkin* visually from the time we hadn't seen her when it was reported zero six five.

Q. Do you know—excuse me, are you through?—A. No, sir; at about one fifty or a little bit before, why, I was concerned with changing course, and later when we were concerned with this crossing ship.

Q. But you weren't concerned with the *Ruchamkin?*—A. I wouldn't say we weren't concerned, but I don't remember any direct effort to locate her, sir.

Q. Did you ever, did you evidence what, any concern you might have felt by any other actions with respect to the *Ruchamkin?*—A. No, sir; I knew that she was coming up in the rear some place. I did not; no.

Q. Did you make any efforts to find out whether she received your message to slow to eight knots, or to five knots?—[248] A. No, sir; I would not normally do that, sir.

Q. Well, did you do it on this particular instance?—A. No, sir.

Q. Did you transmit any message to the *Ruchamkin* informing her of the presence of the *Washington?*—A. No, sir.

Q. Captain Day, you have spoken of a situation where you were concerned about your formation with respect to the *Washington*, your job is to run that whole body of ships, is it not?—A. Yes, sir.

Q. Now you have also stated, as I understand, that it is dangerous to have a stranger inside your formation.—A. Yes, sir.

Q. Now with something as large as that formation, would it not be true that any action taken on your part to prevent a stranger vessel from coming into your formation would have to be taken at an early date, early time?—A. If I were to prevent it, sir; yes, sir.

Q. If you don't prevent it, could you warn away the oncoming merchantman?—A. I don't know of any way to warn them away. I think that there are mariners at sea, all of us rely on the rules of the road as the primary instruction, and when ships, burdened ships persist in crossing ahead, why, you have to [249] sweat it out for a period of time hoping that they will turn away. That's what I did.

* * * * * *

Q. Now you testified earlier that you had sent a signal to the *Washington;* is that correct?—[250] A. Yes, sir.

Q. Now that signal was sent sometime after zero ten, two ten, as I recall?—A. It was sent after it, in my judgment, the crossing ship had cleared ahead of the *Capricornus.*

Q. It was sent then after, in your judgment, danger of collision had ceased to exist?—A. Yes, sir.

Q. Am I correct in my recollection that you phrased that message as you had the vessel identified; is that

correct? Was that the purpose of your message?—A. Yes, sir; I wanted to identify it and report it for violation of International Rules of the Road, sir.

Q. But, unfortunately, you were interrupted by that with the collision with the *Ruchamkin*?—A. Yes, sir.

* * * * *

[251] Q. Now, Captain Day, were any of your vessels operating under darkened ship instructions?—A. No, sir; we had had it be prepared to darken ships, in the instructions, in the Operation order. That is a normal procedure. But at no time were the ships at darkened ship. All of them had all their running lights at all times and ships lighting, all of the ships, lighting of all ships was on also.

Q. In other words, there would be some lighting in the hall or compartment spaces?—A. That's right, through the eye ports, deck ports, and [252] whatnot.

Q. Were there any deck lights that you know; did you observe any deck lights visible?—A. No, sir; not that I know.

Q. Now as you watched this *Washington* or this contact proceed through your formation, you were, as I understand it, acting in extremist, in your mind; is that right, as you slowed twice?—A. Yes, sir; when I slowed, that was the reason.

Q. That would be a situation of extremest with respect to what, your central formation?—A. Yes, sir; I considered it a unit although each individual ship commander had his own responsibility of avoiding collision. I thought, that it would clear us further aft although at the time I had no way of knowing whether this crossing ship would turn right or left or stop or what he would do, if he happened to be asleep—I don't know.

Q. Were you watching that ship come in against a pattern, or a diagram of your formation, were you not?—A. That's right, sir.

Q. And you had the concept of the formation firmly in your mind, did you not?—A. Particularly of the main body, sir.

Q. Did it occur to you that the tanker did not know it was a formation, Captain?—[253] A. Well, I couldn't read his mind. All I knew that is, my judgment was carried out, the tanker seemed to be following the track that my judgment was working on. In fact, that is what happened. The ship, the crossing ship did clear all the ships of the screen and of the main body.

Q. And, in fact, if the *Ruchamkin* had have done what you said, all of the rest of them to do, she too would have cleared, would she not?—A. Said what?

Q. Had the *Ruchamkin* slowed down to either eight or five knots instead of going up to twenty-two, she also would have avoided?—A. It is quite possible, sir.

Q. The collision?—A. Quite possible.

Q. Isn't it a lot more than quite possible?—A. She would not be in the position she was, if the *Washington* had maintained her track; there probably would not have been a collision.

Q. The slowing of your formation drew the track of the *Washington* as she came through ahead of *Capricornus,* as I understand it, some eight hundred yards; is that correct?—A. I am not sure of that, sir. I couldn't say, not knowing, the *Washington's* contact course, and speed at that time. I couldn't say.

[254] Q. Assuming the *Washington* did what she did do, the track came in, as it did come, is it fair to say that by your slowing the solution was changed from collision of *Capricornus* to a position ahead of your vessel some seventeen hundred yards, or ——
A. No, sir; I would say that a change from the last predicted track line which was seventeen hundred yards from the *Fremont* on three twelve, which would

be about seven hundred yards or six or seven hundred yards ahead.

Q. Ahead of *Capricornus*?—A. The slowing down increased that clearance.

Q. Should have helped that out, should it not?—A. Yes.

Q. Did you detect any change of course as you watched the *Washington* come across from your port to your starboard hand, sir?—A. I did not myself, sir, nor was it reported to me either from my watch officers, or chief staff officer, or CIC.

Q. Was it reported to you from the commanding officer of the screen?—A. I believe that I got one message which said that the *Washington* had, that the crossing ship had changed course and was heading into the screen. I think words to that effect, sir.

[255] Q. Now you did observe the *Washington* come into the screen?—A. Yes, sir.

Q. But you did not observe her change course?—A. No, sir. Minute changes of course, say, twenty degrees, would be very difficult to pick up with binoculars.

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[257] Q. Captain Day, if you received a report on a contact from your screen commander, you consider that a fairly responsible report, do you not?—A. Yes, sir.

Q. Your answer was "yes"?—A. Yes, sir.

Q. Now in a situation such as this, you have evidenced a considerable amount of tension and apprehension, amount of [258] personal strain as this vessel came through your formation; is that correct?—A. Yes, sir; very normal reaction in any commanding officer.

Q. I understand that completely, sir. Now in such a situation, if you received a report from an officer as

responsible as your direct subordinate, the screen commander, and that report does not seem to be substantiated by your plots of your radar information or your visual information, or your CIC information, do you feel that it would be normal or proper to check with him on that report?—A. I could visually see what I interpreted his dispatch to mean, sir.

Q. I understand.—A. Which is that the ship was proceeding ahead of the *Corry* and the *Lloyd*, I believe it was, and into the screen.

Q. Suppose he had been under the impression, perhaps mistakenly, that his words meant what they said, and that he thought that the vessel had changed course radically to the right, so as to come through the formation, not the screen, but the formation. Now suppose he was under that impression and your information indicated that he was under an erroneous impression, would it be incumbent upon you in any way to correct him or call his attention to the fact that your observations didn't coincide with his?—[259] A. All I can say is that I was following the ship through by radar, and radar track, and visually with the assistance of my staff watch officer, my chief staff officer, and Ensign Gilliland on the bridge, radar and to our judgment, as we saw it, my judgment and supported by their verifications, that this crossing ship was coming into the screen and was clearing ahead of the main body.

Q. And further than that you didn't investigate?—A. No, sir. I think my judgment, however, was supported by the actual happening. The ship did as we saw it, cross ahead safely, ahead of the screen, into the screen and ahead of the main body and cleared.

Q. Captain Day, as I understand your testimony, you didn't feel at that time *Ruchamkin* was under your tactical control in any way; is that correct?—A. It was not under my direct tactical command.

Q. Did you have any responsibility for that vessel?—A. I certainly did.

Q. You certainly did or did not?—A. Yes, sir; all of my delegated authority, I most certainly in a military sense was responsible for the action of all my juniors.

Q. And that included *Ruchamkin*, did it not?—A. Yes, sir.

Q. Now suppose you had actually known that that [260] *Ruchamkin* was off your starboard quarter heading up on an almost parallel course, about two thousand or twenty-five hundred yards off your beam, at twenty-two knots, on course that would lead across the path of this oncoming tanker, if you had known that, sir, would you have felt any responsibility to warn that vessel?—A. Yes, sir; I think so.

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Redirect examination by Mr. McGovern:

Q. Captain Day——A. Yes, sir.

Q. Referring to the heavy group of ships, when you were on the course two five seven and making fourteen knots, what is the spread across the front of that group from outboard ship on the left side to outboard ship on the right side, [261] approximately?—A. You mean the path?

Q. That's right.—A. It is projected, the projected path the screen would cut——

Q. That's right, the heavy body, not the screen.—A. Oh. The heavy body?

Q. Heavy body.—A. One mile. It is a thousand yards radius.

Q. You have a mile across?—A. That's right, sir.

Q. Now how far in depth did the heavy body extend?—A. The same.

Q. A mile by a mile, roughly. You have a square mile of ships?—A. That's right.

Q. With water in between?—A. That's right.

Q. Now what was the—if you did go either hard right or hard left, in the most expeditious fashion, how much water out in front of the group in the area in which you were going would you occupy in making that turn? I am asking you for your advance and your transfer.—A. The main body, sir?

Q. Main body, a mile by a mile.—[262] A. I couldn't tell you right now, sir. I would imagine two hundred and fifty, three hundred yards, maybe more.

Q. Now did you consider turning all the heavy ships in your group to the right?—A. It was in my mind, sir.

Q. What considerations were also in your mind with respect to the right turn?—A. The rules of the road which required me to maintain course and speed when a burdened vessel was in a crossing position; also the knowledge that there was shipping off my starboard quarter both visually and on radar. It had not been tracked. We were not sure of its relationship to us. Those two were the main, my main considerations.

Q. Now did you consider turning to your left hand?—A. No, sir; I did not.

Q. What were the reasons why you did not? Put it another way. What were the considerations which led you not to?—A. Well, during the approach of the ship, before I knew that it was going to keep, not take avoiding action, I was waiting for it to take avoiding action, and it didn't, so I didn't turn then and I felt that it would be just—just didn't seem reasonable to turn left—towards the direction of the approach of the crossing ship.

[263] Q. Could you have gone astern, full speed astern with your heavy group?—A. I don't think so,

sir. You have to maintain some maneuverability. I wouldn't want a group of ships stopped dead in the water. This ship coming across, I had no idea of what the status was on the bridge of that ship; whether somebody might wake up and turn right, or left on me. The only reliance I had was the minute or minute and a half report that kept coming from CIC, and the visual picture that we saw on the bridge with our binoculars.

Q. Directing your attention to the questions which you were asked with respect to responsibility: What is the naval responsibility as a matter of naval law, naval customs and usage with respect to the commanding officer of an individual ship?—A. Commanding Officer of the ship has the, his prime responsibility of safety of ship, taking care of his ship, that is a very prime responsibility.

Q. Now let us take, for example, the commanding officer of the *O'Hare*, one of the destroyers which was not concerned with the collision. Now he was under the military command of then Captain Persons; is that correct?—A. Yes, sir.

Q. Now what were Captain Persons military or naval responsibilities with respect to the commanding officer of the [264] *O'Hare*? Did they in any way supplant the obligations that the commanding officer of the *O'Hare* had toward his own ship?—A. He is tactical commander, was responsible for the movements of the *O'Hare*. The commanding officer of the *O'Hare* had the prime responsibility of protection of his ship. Under rules of the road, of course, that would be the most—certainly taking extremest action to avoid collision.

Q. That would be taken by the commanding officer of the *O'Hare* with respect to his own ship?—A. Yes, sir.

Q. Now let us assume a situation where the commanding officer of the *O'Hare* regards the safety of his one vessel as having been endangered, but receives a contrary order from the commander of the screen. It is the commanding officer of the *O'Hare*—is he allowed under naval law to take the action which seemed to him as commanding officer of the ship necessary to be taken?—A. Yes, sir. The safety of his ship is still a prime responsibility, and he can take action contrary to higher authority. Of course, he will be held responsible if he has not taken the proper action, and there is a resultant action that he is answerable for.

Q. Now the responsibility, as a matter of naval law, between the commander of the screen and your own command—now how did that run; were you responsible for the tactical [265] orders which the screen commander issued to the screening vessels?—A. I would say I was. I had the over-all responsibility. Yes, sir. He had the immediate and direct responsibility.

Q. Would you know what the orders were going to be, if they were being issued in emergency?—A. No, sir.

Q. You wouldn't have knowledge? You would be responsible, have responsibility, but you wouldn't have knowledge?—A. That's right.

Q. How about the command which was over you, which sent you out; was it their responsibility as a matter of naval law?—A. Well, I would say that they had delegated authority to me to run the operation and they would also be responsible too, sir.

Q. Now it is to that concept of naval responsibility you are referring in your answers to the questions which were asked you on cross-examination where the word responsibility was used?—A. The military responsibility aspect; yes, sir.

Mr. McGOVERN. No further questions.

The COURT. Are there any further questions?

Mr. CRENSHAW. No further questions of this [266] witness.

The COURT. Let him stand down.

Excerpts From Testimony of Henry Stanford Persons, a Witness for the Government

[272] Direct examination by Mr. McGOVERN:

Q. Your name, sir?—A. Henry Stanford Persons.

Q. Your present position or rank?—A. Rear Admiral, United States Navy.

Q. At the time of this accident what was your rank?—A. Captain, United States Navy.

* * * * *

Q. Admiral, will you please state what your command position, and your command relationships were in the Operation Seascape. A. My administrative command was I was Commander, [273] Transport Control Squadron Two in Seascape. At the time, rather, on the evening of 13-14 November I was the Screen Commander for the movement elements under the direct command of Captain Day who was the O. T. C.

Q. Now what was the difference between your administrative command and your screen command?—A. In my administrative command I had some sixteen ships and it was a full-time job administering those ships. The screen command consisted of those ships assigned to me for the Operation. At the time of the collision there were two ships from my squadron and two destroyers from some other command attached to the screen.

Q. Now, sir, at the time of the accident or shortly before, what was your command relationship with

Captain Day?—A. He was the O. T. C. of the formation. Under him I was in command of the screen.

Q. Now were you in command of the heavy ships?—A. No.

Q. What was the command relationship between you and the vessels which were in the screen, excluding the *Ruchamkin*?—A. They were under my direct operational command.

Q. What does that mean, in the sense of the testimony which has been given here the first day of trial?—A. I assigned them stations in the screen and under [274] the direction of the O. T. C. I give them orders maneuvering them. In other words, if he directs the formation to change course, I maneuver the screen as necessary to comply with those orders.

Q. Now what is the relationship between you as Commander of the Screen and the captain of the *Hollis* on which I understand you were embarked?—A. The same as the relationship between me and any other ship in the screen.

Q. Does that constitute a substitution of command?—A. I don't follow your word substitution.

Q. Let us ask you for the facts then. Was the captain of the *Hollis* still responsible for the safe navigation of his own vessel?—A. He was.

Q. Now let us then get to the *Ruchamkin*. What was your command relationship with respect to the *Ruchamkin*?—A. *Ruchamkin* was under my administrative command. *Ruchamkin* in a qual—it's rather difficult relationship to explain—exactly in a qualified sense she was under my operational command in that she'd reported to the screen for duty, but she was not in the screen and under existing tactical instructions, the orders to close do not place the ship in the formation. Specifically, it is stated in the tactical instructions that in order to close or to join does [275] not

place a ship in the formation and it is not to take station in formation until it receives additional directives to do so.

Q. Now had additional directions been given to the *Rachamkin* by you at the time of the collision?—A. None had been executed.

Q. Now, sir, getting back to the facts of the collision, when did you first, you yourself, first become aware of the presence of the vessel which later turned out to be the tanker *Washington*?—A. The first time that I remember was after completing the reorientation of the screen when the formation changed course to two five seven. That would have been somewhere around one fifty. I had remembered that there were lights on both bows but the *Washington* had not come to my attention as any particular ship in the crossing situation up until that time.

Q. At that time how did she come to your attention and what did you see?—A. She was the nearest ship on the port bow, and I looked at her through binoculars and saw a green side light as well as the two white running lights, and she appeared to be on a crossing course.

Q. Now on what ship were you at this time?—A. I was in the *Hollis*.

[276] Q. What part of the *Hollis*?—A. On the bridge of the *Hollis*.

Q. Now did you obtain any reports from the radar room of the *Hollis*?—A. I requested a report to include the closest point of approach of the contact and I was told to wait, that our recent change of course, when we were reoriented, the screen required that they replot the situation.

Q. Did you wait?—A. I waited, and then before I got a report I saw the *Washington* change course to the right, so that I saw both her side lights and then

I saw only the red side light together with, of course, the two white running lights.

Q. About what time was this with relation to the time that you first saw the *Washington*?—A. Oh, some five or six minutes later, perhaps one fifty-six.

Q. What, if anything, did you do upon seeing the *Washington* make an apparent change of course to her own right?—A. I notified the O. T. C. over the secondary tactical circuit that the vessel on the port bow had changed course radically to the right and would pass through the formation on approximately a reciprocal course. That message, of course, was addressed to the O. T. C. but it was on a circuit that all ships were up on so it constituted a general warning signal.

[277] Q. Now what happened next with respect to this contact?—A. Do you mean what the contact did?

Q. That's right.—A. The contact passed between *Lloyd* and *Hollis*. In other words, about through the center of the screen, and then passed ahead of *Capricornus*, which was in the northwest corner of the main body. I don't know the distance. Passed ahead of *Capricornus*.

Q. Did you keep the contact under observation during this time?—A. I did as long as possible.

Q. Now what were the possibles?—A. Well, on radar I was using the P. P. I. on the bridge, radar, the *Washington* passed in the blind spot of our radar, that is, the shadow caused by the mast, when it reached a cone astern of the ship, that is some degrees on either side of the ship's stern, visually I had lost the *Washington*'s lights against the lights of the main body. In other words, the *Washington*'s side lights and masthead lights merged with the lights of the main body and I could not see which was the *Washington*.

Q. When did you next gain observation of the *Washington*?—A. When she came clear of the main body some minute or minute and a half before the collision.

Q. Had you been asking your radar for a plot on her [278] during this time that you had lost her?—A. I did not ask them for a plot because I could see on the P. P. I. they did not hold her.

Q. Now what was the apparent course of the tanker when she next appeared after clearing the main body?—A. At best estimate I could make she'd changed course some, well, it appeared to me, considerable amount to the port.

Q. To her own left?—A. To her left. To approximately the course that she was on when I first sighted her.

Q. Now could you see the *Ruchamkin* at this time?—A. Yes.

Q. Where was the *Ruchamkin* at this time?—A. *Ruchamkin* was coming up clear of the starboard side of the formation, and my best estimate is that she was on a track that would, so that she would pass some two thousand to twenty-five hundred yards outside of the formation.

Q. Now what was her apparent track with reference to the tanker?—A. The last plot—I should not—excuse me, I should not say the last plot. The last information I had from C. I. C. was as the tanker was going down through the screen and ahead of the main body, was that the tanker would pass clear of the *Ruchamkin*, astern.

Q. Clear astern of the *Ruchamkin*?—[279] A. Clear astern of the *Ruchamkin*.

Q. What was the name of the officers in C. I. C. who gave you that—

The COURT. Just a minute. Tell me that again, Admiral.

The WITNESS. As the *Washington* was passing down ahead of the main body, having passed through the screen, they naturally were plotting in C. I. C., and I checked with C. I. C., and they told me that *Washington* would pass astern, clear astern of the *Ruchamkin*. There was no distance involved, but from a check later, based on the changes of course that the *Washington* made, it must have been at least eight hundred yards she passed clear astern.

The COURT. Thank you, sir.

The WITNESS. You asked a question I think.

Mr. MCGOVERN. I think so.

Your witness.

The COURT. What was the approximate course of the *Ruchamkin* at that time?

The WITNESS. A rough guess, sir, would be two seven zero, the course.

The COURT. Two seven zero?

The WITNESS. The course that the formation had been on, she was slightly diverging from the [280] formation course.

The COURT. Now the screen and the main body were at that time on two five seven?

The WITNESS. Two five seven; yes, sir.

By Mr. MCGOVERN:

Q. Sorry, Admiral, I forgot to ask you the final question, which was, Did you intend to send any signal to *Ruchamkin* warning *Ruchamkin* of the presence of the *Washington* when you saw the *Washington* had changed course and was heading towards the *Ruchamkin*?—A. I don't know that I can say that I intended to do so. My reaction was to pick up the microphone and then looking at the scene, looking at the P. P. I. scope, checking from one to the other, I

decided that they were too close, that anything that I sent over the radio at that time would distract the people on the bridge when they were so close. I could not believe that they did not see each other, that the—rather that the *Ruchamkin* did not see the *Washington*. This was some minute to a minute and a half before the collision.

Mr. McGOVERN. That is all.

Cross-Examination by Mr. CRENSHAW:

* * * * *

[281] Q. Now this Operation Seascape was conducted, as we are told, pursuant to at least one Operation order; is that correct?—A. Yes.

Q. Were there more than one?—A. Yes. I believe there was over all Operation order written by Commander Amphibious Training Command Atlantic. There was Captain Day's Operation order. There was a screen Operation order which I wrote.

* * * * *

[282] Q. Is there anything in that Operation, the master one, or any of the subordinate Operation orders that pertains to the navigation or the running of this formation leading up to the time when the amphibious aspect of it becomes important, as the next morning when you actually put the troops ashore?—A. I believe in Captain Day's, in his movement annex that he gave the rough outline of his intentions; that is, to steam east, turn south, turn west, and make the approach. In mine I made certain general cautionary statements, you might say, warning them, the Commanding Officers, to observe the rules of the road and to show good sea manners.

* * * * *

[288] Q. Now this screen command function that you were performing or that this authority that you

were exercising on this particular night is in the nature of a subordinate commander to the O. T. C.; is that correct?—A. That is correct.

Q. And it has been brought out repeatedly that you're not the same as the Commanding Officer of the *Hollis*, that you [289] have command of that officer as well as the commanding officers of the *Lloyd* or the *Ruchamkin*?—A. That's correct.

Q. Now you, however, exercise your authority through the *Hollis'* appurtenances, do you not?—A. Through their——

Q. You use her radios?—A. Through her communications facilities; yes.

Q. You use her C. I. C. facilities?—A. I did, rather.

Q. You were stationed aboard the *Hollis*, were you not?—A. Yes.

Q. Anything that you have to do then in the fulfillment of your function, of your mission, your military mission, has by force to be done through the *Hollis* force?—A. Yes, sir.

Q. She's your flagship?—A. That's right.

Q. And your staff is sort of integrated aboard that ship to carry out that function, is that not correct?—A. Yes.

Q. Now speaking of your staff, how many officers did you have on your staff on this particular evening, Admiral Persons?—A. I believe there were six line officers, not counting [290] the doctor and the chaplain—excuse me. The doctor, not counting the doctor—there was no chaplain.

Q. Now you had an officer, presumably your representative on the bridge?—A. I had a staff watch officer on the bridge, Lieutenant McArthur.

Q. Did you have one in C. I. C.?—A. I did, Lieutenant Slabey.

Q. Did you have one anywhere else on duty at this particular time?—A. No, sir.

Q. From your command station aboard the *Hollis*, if you wanted to tell the *Corry* or the *Lloyd* or the *O'Hare* or the *Ruchamkin* to do something, you had radio communications with those vessels, did you not?—A. I did.

Q. You could also communicate with them by flashing lights; is that correct?—A. That is correct.

Q. And those vessels had a signal watch posted and ready and you had the same?—A. Yes.

Q. Now you had facilities, or someone was assigned to the responsibility of logging messages that went out and were received aboard those vessels, were they not?—[291] A. Yes, within the limits of the personnel.

Q. Within the limits of the personnel. Now would you have more personnel aboard your flagship, the *Hollis*, an ordinary A. P. D. such as the *Lloyd*, if the *Lloyd* is an A. P. D.; I think it is. A. The *Lloyd* is an A. P. D.

Q. And the *Ruchamkin*?—A. Yes, I would have the flag complement.

Q. How many radios, Admiral Persons, would an A. P. D. have to monitor in their C. I. C.'s to follow this maneuver?—A. That would depend on the assignment of the A. P. D.'s and on how they, the radio circuits were split up.

Q. Take the *Lloyd*. How many circuits would she have to guard in her C. I. C.?—A. I would say it would be—she'd have the C. I. net. She would probably have a listening watch on both the primary and screen secondary, and a listening watch on the primary and secondary tactical, if they had that much equipment in C. I. C. I do not know. I believe prob-

ably four was the maximum that she could have manned.

Q. How many men did she have to man these four circuits?—A. On the *Lloyd?*

Q. Yes, sir.—A. I would be unable to answer that question because [292] each ship was slightly different, and the people were assigned to different watches or to different duties by the Commanding Officer and Executive Officers.

Q. Do you have a standard organization for that class ship?—A. There is a standard organization, but it is made up for a full complement, or in peacetime for a full allowance, and the ships were nowhere near full allowance.

Q. You were the Squadron Commander of the *Lloyd* and of the *Ruchamkin*, were not, in your administrative duty?—A. I was.

Q. And one of your responsibilities as a Squadron Commander, or the Administrative Commander would be to know these things, would it not, know the capabilities of your vessels?—A. To the best of my ability; yes.

Q. And you would know whether or not they were shorthanded, or whether they had adequate personnel, would you not?—A. I knew that all ships were shorthanded.

Q. Now in a C. I. C., similar to the one on the *Ruchamkin*, or the one on the *Ruchamkin*, did she have the same number of circuits to guard as the *Lloyd?*—A. When in the formation, yes.

Q. And she had, the testimony has been I believe, and I believe you have been here to hear it, that there were three [293] men there to man the C. I. C., as I understand C. I. C., that would require one person to man the radar, if there was any plotting to be done, one person would have to do the plotting—now that would leave one person who presumably

could man these radio nets. Now as the officer who was in charge, administratively, as it has been said, of these vessels, would you think that one man could successfully guard five or four radio circuits?—A. Frankly, no.

Q. Now as the plan indicated, the *Ruchamkin* was to sortie from Norfolk and proceed, as I understand it, to a beach reconnaissance mission to obtain some information which would be helpful or useful to the completion of this exercise. Some time later on, it's been said, about midnight, I believe it appears in the testimony, she was to rejoin the group. That is a rough general statement; is that correct?—A. That is correct.

Q. Now as she was off there proceeding on to this independent mission, what means did you take to see that the *Ruchamkin* knew where your group was so that you would not—she would not have any difficulty in finding you and making this connection with the time came?—A. When the *Ruchamkin*—I should start that—before the *Ruchamkin* joined, I made no attempt because we were following approximately the designed track. We were perhaps [294] a little bit behind, but we were still along the track the *Ruchamkin* could expect to find us on.

Q. Do you know—excuse me.—A. When we changed and started north, rather than south, there was no need to tell the *Ruchamkin*, send them any particular message on our intentions because instead we gave them the new changes of course by voice radio. We had them on the radar.

Q. Now do you remember what time this was that you had the *Ruchamkin* on the radar and you communicated this to her by radio?—A. When I came up on the bridge at about 12:30, the staff watch officer, who was then Lieutenant Cameron, was being relieved,

stated that he had the *Ruchamkin* astern of us, and that he had checked out all radio circuits with her and that she was following.

Q. What time was this, sir?—A. That was about 12:30.

Q. About 12:30. Do you know whether or not the *Ruchamkin* transmitted any messages to you to ascertain whether or not she was correct in her belief as to where you were?—A. I don't recall any. The first message that I recall was when she reported for duty about 1:30 or 1:40 along in there.

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[295] Q. As the *Ruchamkin* came up, what, according to the Operation Order, was she to do when she finished this reconnaissance?—A. She was to do two things. She was to report on the reconnaissance and then was to join the formation, take station when assigned a screen.

Q. Did she report on the reconnaissance?—A. I understand that she did. I have no direct knowledge.

Q. Did she take her station in the screen?—A. No.

Q. Now you had then the *Ruchamkin* on your radar from about midnight or 12:30. You knew she was following behind your group, ready, when the time became proper, to take her station or as you have said, to proceed to a position from which to take her station; is that correct?—A. Yes.

Q. At no time during the 12:30 and this collision then did you know of her departing from that area or going away [296] somewhere else; as far as you know, she was back there then all the time?—A. She was astern of the formation except as the formation changed course, she was following us around, waiting for us to take a steady enough course for her to close and to be put in the screen. To the best of my knowl-

edge she didn't leave the area. I don't know exactly what the limits, the area you refer to are.

Q. She was within radar contact all this time?—A. To the best of my knowledge; yes.

Q. Now then, there came a time, as I understand it, where she decreased this distance from your formation, and I believe there was a radar report given to you or to someone on your bridge that she bore zero eight nine thousand yards. Do you recall such a report, or are those figures accurate?—A. I believe that zero eight four nine thousand was around 12:30 perhaps. I could not be sure about it. There was such report and it was before she reported, before I reported her bearing and range to the flagship.

* * * * *

[298] Q. Therefore, the range and bearing of the *Ruchamkin* at zero one—excuse me, at some time between zero one forty or thereabouts was zero eight four true and nine thousand yards?—A. Yes.

Q. Now at that time——A. From the *Hollis*.

Q. Thank you. That was range and bearing from your [299] vessel, the *Hollis*. Now, do you recall the language in the message which you received by which the *Ruchamkin* reported for duty, or your subsequent transmission to her?—A. I am not positive of the language the *Ruchamkin* used in the message, but I am sure he said reporting for duty. I am sure that I told him to close and be prepared to take station in screen when so directed, and then subsequently, a separate message. I told him to expedite.

Q. Now would you explain to us what you meant to the *Ruchamkin* by the word "expedite"?—A. I meant for him to take such speed or use such speed as necessary to complete the maneuver rapidly, but, of course, without unnecessary risk.

Q. Well, now, Admiral Persons, a destroyer commander or an A. P. D. commander such as Commander Jackson was at that time, enjoys or likes to enjoy a reputation for handling his ship with dispatch and with precision, I believe the term has been used, to handle it smartly; is that correct?—A. That is correct.

Q. So that when you give an order to a screen vessel such as the A. P. D. *Ruchamkin* you would expect that vessel to get going and do it as quick as she could do so ordinarily, would you not?—A. I would. [300] Q. So that without more, you would normally expect her to move promptly, but would it not be fair to say then that your addition to the word expedite was something more than just promptly, but to use available, all available power to get there?—A. No, I wouldn't say all available. However, as it turned out, he used very close to all available power and I concurred in what he was doing. He told me he was making twenty-two knots at a later time.

Q. What is the maximum speed of this type vessel?—A. With the equipment they have on board some twenty-three, twenty-four knots.

Q. In fact, you had discussed, had you not, at the conference prior to sailing, the fact that the *Ruchamkin* should have boiler power sufficient to give her this sort of speed, did you not?—A. I don't recall the exact discussion, but it would be natural for her to have it because she would have a difficult time catching the formation otherwise.

Q. Now then, we have the situation where the *Ruchamkin* has reported for duty and you have ordered her to close the formation and to proceed to a position from which to take station and to expedite, or hurry up doing that.—A. That's right.

Q. Now did you give her the coordinates of this [301] position to which she was to proceed, from which

to take her station, or did she know the coordinates of that position?—A. She knew the coordinates of the station that she was going to be in the screen, and from that you would assume that she would head for a point astern of that.

Q. How far?—A. My intention was that she, when she got some twenty-five hundred to two thousand yards astern of the screen, that I was going to execute the Form Five ship screen.

Q. Which of those two points were you going to do it, when she was two thousand yards away, or when she was twenty-five hundred yards away?—A. In that neighborhood. I believe that you'd be at sea enough to know that it's not an exact science, and that when the radar says the range is so-and-so, that by the time you get the word up there, and executed over the radio, it might be five hundred yards difference.

Q. Would it not be possible to know the rates of advance of such a vessel and to very closely approximate the time at which she would be at twenty-five hundred yards or two thousand yards and get your message out and be ahead, Admiral Persons?—A. It would, but as the necessary—there are so many other things to do that that appears to be a little bit of unnecessary smartness.

[302] Q. It appears to me as unnecessary in this sense—see if this is correct—the position to which the *Ruchamkin* was proceeding, in the sense have gone to somewhere from which to take station, was it not, and there was no necessity for it being definitely fixed; is that correct?—A. The position from which he was to be told to take station?

Q. Yes, sir.—A. That is correct.

Q. So far as the *Ruchamkin* was concerned, she could head for her station and expect that some time before she got there, you would give the orders to

form the five-ship screen and tell her to take her station?—A. That would be normal; yes.

Q. You wouldn't expect the *Ruchamkin* to make a change of course or speed appreciably at that time, would you?—A. Not unless there was some outside reason for it.

Q. So that really what this order is to proceed to a point from which to take station is more or less from your end. It's an order that anticipates a screening vessel coming up from behind to fill a segment, or a sector in your screen and you don't want to open up your screen to a vacancy there unless she's fairly close. Isn't that more or less the theory behind it, Admiral?—A. That is it; yes.

[303] Q. So that really this figment we have here is designed primarily from your standpoint, to see that you have antisubmarine coverage up ahead of this group at all times?—A. That——

Mr. McGOVERN. Your Honor, I don't like to object, but I thought the noun was figment.

Mr. CRENSHAW. That is correct.

Mr. McGOVERN. Your Honor, I don't think that that is a word to which any witness can answer.

The COURT. Well, see if you can rephrase it.

By Mr. CRENSHAW:

Q. This position then, or this order which was issued to the *Ruchamkin* to go to a position from which to take the station, then that order was really to insure that your antisubmarine search was unbroken, that the formation was protected at all times?—A. That is correct, but also because of the existing tactical instructions, it was very clear or should have been very clear to the *Ruchamkin* as to her status during that period.

Q. What tactical instructions do you refer to, Admiral?—A. To classified book that I cannot name.

Q. Can you give us any idea what it says?—A. Well, when a vessel is ordered to join—pardon [304] me—to close or to join, that order does not place the vessel in the formation. The vessel will not take station in the formation until it receives a specific order to take a certain station.

Q. And am I correct that you say that such instructions, such tactical instructions are classified?—A. It is classified.

Q. And because of its classification you can't tell us the name of that instruction?—A. I can't tell you the name of it and I can't quote it. It might actually be from two different paragraphs, but that is the sense of it.

Q. Now when you were at this presailing conference and you discussed with Captain Jackson the fact that he would have to join this formation at nighttime; did the question come up about how far away from that formation he would go in addition to the general approach? In other words, that he would come up from astern and come into your group?—A. As I recall the statement, was made by Captain Jackson that he would keep well clear of the main body. There was no distance stated.

Q. Your testimony is then, that there was no distance stated at that conference to you?—A. To the best of my belief, there was no exact distance.

[305] Q. Admiral Persons, I have here a maneuvering board with several dots on them which I have prepared this morning and which may or may not accurately indicate the positions of the heavy ships and the screening vessels in this formation. I wish you would look at them and let me have your thoughts as to whether or not you think they are correctly

positioned, and if they are not, I have a clean board and will be happy to let you position them.

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[310] Mr. Crenshaw. What is the number of that?

The Clerk. Texas Defendant's Exhibit No. 5.

(The Clerk so marked the paper as "Texas Defendant's Exhibit No. 5" in evidence.)

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[312] By Mr. Crenshaw:

Q. Now, Admiral Persons, that diagram there does show in a general way at least the fact that the *Ruchamkin* was back in the quarter of that formation, and that she was proceeding to a definite point up ahead of the formation, and that both you and Captain Jackson on the *Ruchamkin* knew both of those two points?—A. Yes.

Q. Now when you changed, or the formation changed course from two seven o to two five seven—you have spoken of a process known as the reorientation of a screen—preparatory to your testimony has Government counsel submitted to you a diagram of a suggested or theoretical reorientation of a group of naval vessels about one-fifteen?—A. They showed me something. I don't know about the [313] time or I would recognize it if I saw it again.

Q. I show you a copy of the diagram which was annexed to the Texas Company's request to admit——A. That is the one.

Q. Now, Admiral Persons, this diagram purports to show the formation in the lower right-hand corner as they were steaming on a northerly, in a northerly direction. It shows the *Corry*, the *Lloyd*, the *Hollis* and the *O'Hare* positioned out in front of those ships on their assigned stations. Now it shows as these heavy ships come up, a turn to the left which indicates, which the person who prepared that, myself, intended

to indicate that those vessels simply came up to that point and turned their wheels to the left and went around the corner.—A. Yes, sir.

Q. Is that correct; was that followed at this time?—A. For the main body, yes.

Q. For the main body. Then it shows the screening vessels depicted by red dotted lines and it shows them come up on straight dotted lines, dead reckoned to the same time approximately as this turn was made, or until the time that their logbooks indicated that they deviated, that they changed course from that northerly direction. Then it shows, for instance, the *O'Hare* going off on a course to the right, of the new course of west, at a speed of approximately, speed of [314] twenty knots; the courses given two eight five and the speed is given as twenty. The *Hollis* comes up and makes about the same turn. She is a little to the left, twenty-seven degrees to the left, speed up to seventeen knots. The *Lloyd* makes a sharp turn to the left, and goes to seventeen knots and then comes back to the right. The *Corry* makes a much sharper turn to the left, heading down as far as two hundred, twenty degrees west of south, and slows to twelve knots, and comes out to this point here and then comes along. Now these courses and these speeds, as they were prepared, as they were put on that paper are based on a directive by the screening command, yourself, to use seventeen knots in reorienting. Modifications have been made for the *O'Hare* because her logbook shows she used twenty knots. Modifications were used for the *Corry* because it's indicated she was on station before that time.

* * * * *

[315] Q. Let me ask you this. What we have tried to do by this diagram is to show in general what the screening ships would have to do. In other words,

the *O'Hara* would have to speed up and go to the right of the course line; the *Hollis* would have to go a little to the left of the course line; the *Lloyd* would go quite a bit to the left of the course line, and the *Corry* would go way to the left of the course line, and slow down. Now are those general statements more or less [316] correct?—A. The general statements are more or less correct. I do not like the track, for example, of the *Corry* because what time were you executing for the *Corry* now?

Q. We executed upon one-forty. I don't have the time on her.—A. This is a ninety degree change.

Q. But it was the time at which her logbook indicated she did execute that signal.—A. You did.

Q. Yes.—A. Because the point is, of course, we have emphasized before that the reorientation order by me was executed usually some five to seven to eight minutes before the main body changed course, and the time of that would make the tracks different.

Q. So that your difficulty with that diagram is the precise courses and speeds; it depicts more than the general plan that it depicts?—A. The precise courses and speeds and times in connection with the *Corry* would change the picture completely. I mean any variations in those could change that sharp elbow you have in there very definitely. The others, I believe, are generally correct.

Q. Would it be fair to say that the *Corry* would change [317] to the left farther than the *Lloyd* would and most probably slow?—A. It would slow and would change further to the left.

Q. And then at some time she would come back to the course and speed on it?—A. That's right. I think she would slow more than the two knots you have indicated.

* * * * *

Q. Now, Admiral Persons, when the *Ruchamkin* reported in to you for duty, you gave her one order to close the formation and to expedite?—A. I gave her that order in two separate signals: yes, sir.

Q. Now is it correct to say that you gave that first order about zero one forty-nine, or do you know that time?—A. I don't recall. It was before the change of course I believe to two five seven.

Q. Now the *Ruchamkin*'s logbook indicates, the voice [318] radio log indicates that they received a message from you at zero one four nine, formation has decreased. I think that is an error, but it says decreased speed to fourteen and are on two five seven, expedite. Would that be the message to which you referred, your first message to them?—A. No, that is an information message to them on it. The message would have been, I am sure, that formation has increased speed to fourteen knots and has changed the formation front to two five seven.

Q. Now this thing seems to be in two parts, or a break there, but I can't read one word after the word expedite. It says from or form R2 something S14 screen 3C6. When you're on assigned station would that expedite pertain to the proceeding or what would that expedite mean in there?—A. I think I can explain by the fact that those are two separate signals. One on two separate circuits. One was sent to the O. T. C. informing him that it was my intention to form a five-ship screen with the *Ruchamkin* in the screen. The other was an information signal which I sent from the bridge that one—pardon me—the first one to the O. T. C. came out of CIC at my direction over the, I believe, secondary tactical. The other one was sent by me, was for primary screen circuit, from the bridge, telling him that the formation had increased speed to fourteen knots, had altered course to two five seven and to expedite.

[319] Q. Now when did you first see the *Washington?*—A. My belief is the first time she was brought to my attention, that is, separate from the other lights on the port bow, was at about o one-fifty.

Q. Then you observed her, do you know—I believe you testified that you saw her green lights about zero one five o, one five six: is that correct? A. That's right.

Q. Then you have testified that you issued on an announcement on one of these radios to the O. T. C. that she had changed course radically to the right and would come through the formation?—A. That's correct.

Q. How long before the O. T. C. slowed his formation was it that you issued that broadcast?—A. Several minutes. I don't know exactly. It could be as little as two or three. It could be more.

Q. Is there a logbook kept on the circuits that you sent that message over?—A. It should have been.

Q. Do you know of any other persons besides yourself that heard that message go out?—A. Yes.

Q. Who?—A. There were people from the *Lloyd,* I believe, and from [320] the *Corry,* I believe, that testified in the Naval Court of Inquiry that they heard that message, that they received that message.

Q. Were you here the other night when Captain Day testified, I believe, that he did not recall receiving that message?—A. I was.

Q. Now do you have any explanation for his not receiving it?—A. When my people tell me they sent the message out and the other people on other ships receive it, then I have to assume the message went out. The fault, if any, must be on the receiving end.

Q. Now after you made this announcement, two or three minutes, or some short time before the speed reduction, you had already ordered the *Ruchamkin* to come up?—A. Yes.

Q. And you had already ordered her to come up and expedite?—A. Yes.

Q. Now after, just prior to your announcement of this course change you asked your CIC to give a solution on that ship. Did they give you a solution, such solution on the *Washington*?—A. No, because *Washington* changed course before they got it.

[321] Q. Did they give you one when they did get it, or did get an opportunity to get it?—A. They did not give me their own solution, they relayed what the O. T. C. put out on the C. I. net, that—I don't recall exactly the timing but first the collision *Capricornus* and then later that was modified to indicate that the closest point of approach would be, I believe, seventeen hundred yards ahead of *Fremont*, or *Fremont*—I have forgotten the bearing.

Q. You referred to not being able to see *Washington* in your P. P. I. scope.—A. After she got astern of me, within the blind spot.

Q. But up until she got to that spot, you followed her on the P. P. I. scope?—A. And visually I would look up.

Q. Did you yourself look at the P. P. I. scope, Admiral?—A. I did.

Q. And you saw her coming in after you sent that message to the O. T. C.?—A. Yes.

Q. Now, Admiral, you have spoken about this relative movement business.—A. Yes.

Q. Are you pretty familiar with that, sir?—A. Fairly.

Q. Are you familiar with the positions that your ships [322] in your formation, your screening ships and your heavy ships had that night; were you at the time?—A. I was.

Q. Were you able to hold in your mind a picture of that and picture of the relative position of the

Washington as she came through that formation?—A. I believe so.

Q. Now with that ability and with that knowledge would you have expected the relative motion of the *Washington* to change any after she changed her course to the right?—A. I would have; yes.

Q. Now you have said that she changed to a course approximately reciprocal to the formation.—A. That was my first estimate. Yes.

* * * * *

[326] Q. Now, Admiral Persons, after you had sent this message that the course of the *Washington* had been changed to the right so that she would pass through the formation on the reciprocal course, by comparison of this red dotted line to the black or green dotted line, it would appear evident that that had not happened?—A. Pardon me, that what had not happened?

Q. That she was not proceeding on a reciprocal of the formation; isn't that correct?—A. That she was not proceeding on a reciprocal of the formation? That is correct. I was incorrect on that estimate.

Q. Were you incorrect on your estimate?—A. But she was passing through the formation.

Q. Now did your CIC ever give you a solution or give you a correction of your estimate?—A. No.

Q. Did they hear your estimate; do you know?—A. I believe they had inasmuch as the message I think was sent from CIC. In any case they had a speaker watch there.

Q. Now as the *Washington* proceeded then down this red line, from the motion that you have indicated you were watching your radar scope, and could see the contact on your radar come down through that line; is that correct?—A. That's right.

[327] Q. Now you have testified to the fact that there was a time when the formation reduced speed?—A. Yes.

Q. I believe it was from fourteen to eight knots; is that correct?—A. The first reduction; yes.

Q. Did you at that time or about that time send a message to the *Ruchamkin*?—A. I believe I informed them that the formation had changed speed to eight knots and continued to expedite.

Q. And what did you mean by continued to expedite to the *Ruchamkin*?—A. I meant for her not to take the formation speed but to keep on closing so that she could be placed in the screen.

Q. And prior to that she had told you that she was proceeding at twenty-two knots?—A. That is correct.

Q. And you knew that at that time?—A. Yes.

Q. And then once again, the formation, a minute or so after, slowed from eight to five knots?—A. Yes.

Q. Now did you know why the formation was making these two slowings?—A. I did.

[328] Q. Why?—A. In order to permit the *Washington* to pass ahead of the main body.

Q. Now did you or did your order—did you then give any further orders to the *Ruchamkin*?—A. I did not. I informed them of that later change of speed.

Q. Did you issue any warning to the *Ruchamkin*?—A. Not directly.

Q. How then indirectly did you?—A. The first order, warning that I consider was issued was the general warning that the contact had changed course and was passing radically to the right and would pass through the formation. That was the general warning to all. And I knew that the *Ruchamkin* as well as all others, all the ships in the formation, were on that circuit and had checked in on that

circuit. Secondly, when the formation neared the *Lloyd*—pardon me, when the *Washington* neared the *Lloyd*, I directed the *Lloyd* over the secondary screen circuit, to maneuver as necessary to avoid contact. That circuit was also guarded by *Ruchamkin* which, in effect, that message should warn her. Third, I had received word from the CIC that the O. T. C. on the C. I. net had broadcast estimates on the *Washington*'s closest point of approach to the main body, which in itself, since the *Ruchamkin* was in the vicinity and was on the C. I. [329] net, was a warning to the *Ruchamkin*.

* * * * *

Q. Did you know, Admiral Persons, that your staff communicating Officer commenced to send a message at ten minutes after two, to all of the ships in the screen, to tell them to form this five-ship screen and that they got an acknowledgment back from all of those ships except the *Ruchamkin*, and that they continued to try to send that tactical message to inform the five-ship screen from that time, of ten minutes after two until the collision; do you know that, sir?—A. I found that out just before the collision, or just after the collision. I don't recall now which.

Q. But still your reliance upon a warning to the [330]. *Ruchamkin* was the sending of a message out over these circuits?—A. There were three messages, or four messages over three different circuits.

Q. Was the *Ruchamkin* asked to acknowledge any of those messages?—A. To the best of my belief, no.

Q. You don't know if she had knowledge of any of them, do you?—A. To the best of my knowledge she did not.

Q. This ship was under your command, was it not?—A. What command?

Q. Was she under your command?—A. She was under my command as Squadron Commander, yes.

Q. Was she under your command of the screen?—A. Not yet. In a qualified sense, yes; but not directly in that her maneuvers were limited or constricted by any directive of mine.

Q. Yet you ordered her to come up to the formation and expedite and she did expedite?—A. That is correct.

Q. You could have ordered her to stop and she would have stopped, would she not?—A. That is correct.

Q. She would have turned right, left, or anything that [331] you had told her, would she not?—A. If I had stepped in and told the captain what to do, yes, but he was in command of his ship.

Q. As I understand, your concept then, you had all of this power but you had it in your pocket, you didn't choose even to exercise or you didn't step in and exercise this complete authority over the *Ruchamkin* at this particular time; is that correct?—A. I don't believe that that's quite a correct statement.

Q. Wherein does it err?—A. The captain of any ship, unless he is in formation, must have authority and freedom to maneuver his ship as necessary to carry out the directives he has been given. No one tells him that he comes, he puts fifteen degrees left rudder on or that he rings up two more turns. You may tell him to expedite, but you don't tell him he speeds up one more knot, for example.

Q. Suppose, Admiral Persons, this vessel, the *Ruchamkin* had have been at, say, two o'clock in station number five of your screen, and you had directed her to proceed from station five on the right-hand side of your screen to station two forward and on the left-hand side of your screen. Now, first,

would she have done that?—A. If I had directed her, yes, but she would have been [332] in the screen, it would have been a different situation. She would have been part of the formation.

Q. And that is the reason that you didn't warn the *Ruchamkin* then because she wasn't in your formation?—A. No, that's not the reason, I did not warn the *Ruchamkin* directly. I did warn the *Ruchamkin* the same as I warned the O. T. C., the same as I warned the other ships in the screen.

Q. So that as far as your responsibility for safety and your duty to warn is concerned, there wasn't really any difference between the *Ruchamkin* and the *Lloyd*, was there?—A. I consider that I had a responsibility toward all the ships in the formation, whether they were under my command or not, to warn as necessary, under the situation with the *Lloyd*—pardon me—with the *Washington* on a relative movement track that would have passed clear astern of the *Ruchamkin*, there was no more need to warn the *Ruchamkin* than there was any other vessel in the formation. I was unable to anticipate that the *Washington* would change course to the left into the *Ruchamkin*.

Q. Now, Admiral Persons, you have stressed, I believe, quite considerably this change of course to the left of the *Washington*?—A. Yes.

Q. First, how did you see it?—[333] A. When I got the *Washington* clearly, shortly before the collision, that is, when she came clear of the lights, it appeared to me that her attitude was different than it would have been if she had stayed on the other course.

Q. Now you have said that you believed when you saw this change of course by the *Washington* to the left, you believed that prior to that she was going to pass clear of the *Ruchamkin*?—A. That's correct.

Q. So that you had paid attention to determine how the *Washington's* movement line would come and where it would be with respect to the *Ruchamkin;* is that correct?—A. That's correct.

* * * * *

[334] Q. Admiral Persons, I have a little short bit from the Court of Inquiry concerning this particular thing. At about, sometime about zero two zero five, the vessel passed between the *Hollis* in the number one screen station and the *Lloyd* in the number two screen station. The exact distance I do not know, but it appeared to be quite a bit closer to *Lloyd* than to *Hollis.* That time is correct?—A. To the best of my belief, yes.

Q. On the radar it appeared that the *Hollis,* was coming [335] very close to those ships in the northeast section of the formation, the *Capricornus,* and possibly to the *Glynn,* as it neared the main body, the vessel merged with the navigation lights and other lights of the vessels of the main body and shortly thereafter went into the blind spot of my radar. Is that correct?—A. That is correct.

Q. At some time approximating two ten the O. T. C. increased formation speed to fourteen knots, and although I could not be certain it appeared that the vessel cleared the main body. I still did not have it on P. P. I. That is correct?—A. That is correct. I did not have it on P. P. I., did not have it clearly visually.

Q. I turned around and checked the PIP's on both bows and then turned back to this vessel. Shortly thereafter it came out past lights of the main body and it appeared to have changed course to the left and was heading in the vicinity of the *Ruchamkin.* I picked up the microphone for the primary screen circuits to call *Ruchamkin* and then realized the vessel

was so close to the *Ruchamkin* that anything I told them would serve only to distract them, and not to help them. The Commanding Officer of the *Hollis* and I standing side by side watched it through binoculars and I asked him if he thought it would pass clear. He said I believe *Ruchamkin* had passed [336] ahead. Shortly thereafter about a minute to a minute and fifteen seconds after I had picked up the headset for *Ruchamkin*, I got over the screen primary, "I have been rammed. I am sinking. Please help me." Now that is a correct statement, nearest of your knowledge?—A. To the best of my knowledge, yes.

Q. First as to the statement, that you—the *Washington* became merged in the navigation and other lights of the formation. Could you tell me very briefly what those other lights were?—A. The lights that are normally around any ship at sea not darkened or out of portholes and so on. The lights such as *Washington* showed out of portholes.

Q. So that there were a number of lights, each one of these ships?—A. That's correct.

Q. Quite a glow of illumination?—A. I wouldn't say glow, but there was a background of lights.

Q. Against that background of lights you lost the *Washington* when she was between you and those lots of lights?—A. That is correct.

Q. You also lost the *Washington* as she came through [337] your blind spot of the radar?—A. That's correct.

Q. Now as she came out near the *Capricornus* about two ten, you didn't have it on your P. P. I. scope, did you?—A. No.

Q. As I recall your direct testimony you didn't inquire of CIC as to where she was because you knew they didn't hold her, because you didn't see her?—A. That's correct, same radar.

Q. There is nothing in this testimony that mentions any solutions from your CIC that this vessel was going to pass astern of the *Ruchamkin*?—A. If you will refer to the cross-examination where I cross-examined Lieutenant Slabey, later on in there I believe you will find that is brought out.

Q. Now how long would it have taken you to called the *Ruchamkin* and say, Did you see the stranger?—A. Well, it depends. If I waited for an answer and had somebody come over to pick up the microphone, it might have been fifteen, twenty seconds, but it might have diverted them just at the time.

Q. How long would it have taken you to get that message out when you held that mike in your hand, the microphone in your hand?—A. Probably ten, fifteen, twenty seconds.

[338] Q. Why would it have taken you any longer than twenty seconds?—A. First, you have to find the thing in the dark, you have to find the right button. Then you have to call the voice, the voice call of the ship and get the ship. There is no need——

Q. Admiral Persons, the testimony that I just read you which you gave before the Court of Inquiry said you had the thing in your hand.—A. That's right.

Q. Now you don't have to search for it, if you have it in your hand; do you?—A. That was part of the time was picking it up, though.

Q. But at that time you had it and all you had to say, *Ruchamkin*, do you see her?—A. No, that wouldn't have helped at all; that would have started an argument—who do I see? The main body, or the screen, or what. If you are assuming that the *Ruchamkin* does not know of the presence of another ship, then you must go into giving the approximate bearing of the other ship from *Ruchamkin* so that they know where to look.

Q. This vessel was visible to you right ahead of the *Ruchamkin,* was it not, off her port bow?—A. At what time?

Q. When you had that microphone in your hand, you knew [339] where the two of them were?—A. The vessels were within a few hundred yards of each other.

Q. Now at the Coast Guard, were you examined as to why you did not warn the *Ruchamkin?*—A. I don't recall about the Coast Guard hearing in that particular.

Q. In other words, to refresh your recollection I would like to read to you Question fifty-four: Did you at that time explain to the *Ruchamkin* or for the *Ruchamkin* that there was a stranger in his midst heading across the formation? Do you remember that question?—A. No; I do not.

Q. Your answer to that, sir, was: No, as he had radar.—A. That's correct.

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Excerpts From Testimony of Charles T. Ryan, a Witness for the Government

[341] Direct examination by Mr. McGOVERN:

Q. Your name is Charles Ryan?—A. Yes, sir.

* * * * *

Q. Were you a signalman on the U. S. S. *Ruchamkin* on the evening when she had a collision with a tanker?—A. Yes, sir; I was.

Q. Did you attempt before that collision to send a signal announcing your arrival to the officers in Tactical Command?—A. Yes, sir; I sent a signal.

[342] Q. Do you have that signal in your hands?—A. Yes, sir; I do.

Q. When did you send it, according to your notes?—A. Serial zero one five five Roger.

Mr. McGovern. I would like to introduce the copy instead of the original.

* * * * *

[343] Mr. McGovern. Very well. Let us put the original in.

By Mr. McGovern:

Q. Did you attempt to send a similar signal to the Commander of the Screen on the *Hollis*?—A. Yes, sir; I did.

Q. Were you able to communicate with the *Hollis*?—A. No, sir.

Q. How long did you try to raise the *Hollis*?—A. From shortly after I did send it to the *Fremont*, I attempted until two ten, I believe it was, to send it to the *Hollis*.

Q. When did you first see the tanker which came into collision with your vessel?—A. Shortly before it hit us.

Q. How shortly before? A minute, or more than a minute?—A. I don't recall how soon before it was; at the same time that I believe the captain said that he appeared to be closing us.

Q. Were you looking in a direction, general direction from which the tanker appeared?—A. Yes, sir.

* * * * *

Cross-examination by Mr. Crenshaw:

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[348] Q. Was the first time you had any idea that the *Washington* was anywhere around when you saw her, just as you said, the same time the captain saw her?—A. That's the first time.

Q. Was that the first time you had any idea what she looked like to you when you saw her?—A. Saw the bow off the *Ruchamkin* and the green running lights.

Q. How far away was she from you?—A. I don't recall now.

Q. Did you see the white lights?—A. Masthead lights.

Q. Masthead and running lights?—A. Yes, sir.

Q. And that was at the time that the captain said that looks like it's closing us, or words to that effect?—A. Words to that effect; yes, sir.

Q. You had not seen her prior to that time?—A. No, sir.

* * * * *

[349] The COURT. What was your location; where were you located on the *Ruchamkin* when you first saw the tanker?

The WITNESS. I was on the open bridge, sir.

The COURT. On the open bridge?

The WITNESS. Yes, sir.

[350] By the COURT.

A. Standing right beside the captain.

Q. Can you account for your not seeing her before you did?—A. No, sir.

Q. I mean when you saw her, she was within approximately what distance of you?—A. Very close, Your Honor.

Q. What would you estimate it?—A. Three to four hundred yards, maybe even less.

Q. Well, she had all her lights burning, did she not?—A. Yes, sir.

Q. But your attention was directed to something else?—A. Not at that time! no, sir. I possibly was doing something else when I heard——

Q. You're speaking of that time, that is, when you first saw her?—A. Yes, sir.

Q. Just previous to your first sight of her, were you occupied in something else, or what were you doing?—A. I don't remember, Your Honor.

Q. I am trying to find out why it was with your lights all burning you didn't see her before she was within the range you mention.—[351] A. Well, I had just come up from down below, Judge.

Q. You had just come up; how long had you been on the bridge?—A. Yes, sir; about a minute or a little longer.

Q. When you arrived, was there any indication that the others on the bridge were aware of your presence?—A. No, sir.

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Excerpts From Testimony of A. C. Jackson, a Witness for the Government

[383] Direct examination by Mr. McGOVERN:

Q. Captain Jackson, where were you born?—A. Fayetteville, Tennessee.

* * * * *

Q. Where did you first join the Navy?—A. In Macon, Georgia.

Q. What date, year?—[384] A. To the best of my memory it was the 21st of May 1941.

* * * * *

[386] Q. Were you the Commanding Officer of the U. S. S. *Ruchamkin* when she had a collision?—A. I was.

* * * * *

[388] Q. Now, Captain, getting back to the night of the collision, did the *Ruchamkin* have a separate mis-

sion which took her away from the formation for some time during that night?—A. It did.

Q. What was that mission?—A. Well, under the Operation Order I was to command this reconnaissance unit, was to put a certain number of Army troops on the beach, and on one night and retrieve them on the next night, and upon completion of this operation I was to rejoin the movement element that was to take all the troops in to the beach the next day.

* * * * *

[389] Q. After you took this Army reconnaissance party aboard, did you then leave the beach and go out to join the formation?—A. Yes, sir; I did.

* * * * *

[390] Q. Which way did you approach the formation, from the front, the rear or the side?—A. Well, they were going east. I was also going east. I was following at that time.

Q. I see. How long did you remain behind the formation?—A. Until after they had turned.

Q. Now how far behind were you at this time, if you remember?—A. Well, I was various distances behind them, ranging anywhere from about nineteen to twenty miles on up until I was within a mile of them or less. Considerably less, as a matter of fact.

* * * * *

[391] Q. Now directing your attention again to the situation as you approached the formation, eventually the formation got into a westerly course steering two seven o. Do you remember that?—A. Yes, sir.

Q. Now where were you with respect to the formation at the time the formation steadied on two seven o?—A. Well, sir, if you can conceive in your mind, we had this large circular formation with a screen out in front and as they were on a course approximately

east, they made a course change to the north, and make another course change to the west, still another course change to two five seven, which is slightly south of west, and as they—I was behind [392] them roughly on their starboard side, and as they made their maneuver around, well, we followed them around like the end run, and when they came to two seven o, well, I was probably still on a northerly course trying to bring myself around so I would be in position to move in where I had been told to go.

Q. Now do you remember about what time it was when you found yourself in a position where if ordered you could come up and join the screen?—A. To the best of my knowledge I think that I reported to the screen commander that I was ready to join. To the best of my knowledge that was about one thirty-eight.

Q. o one three eight?—A. o one thirty-eight.

Q. How did you send that message to the screen commander?—A. On the voice radio.

Q. Now where was the voice radio with reference to where you were standing?—A. It was in the bridge. The microphone and speaker was in the bridge—it was down in the radio shack, to the best of my knowledge.

* * * * *

[394] Q. Well, now, we are interested in the situation during the approach. Now in your own way, taking as much time as you want, will you go through the approach from the time that you reported that you were ready to join up to the time of the collision?

* * * * *

[395] A. The first, when I had taken it up to where they had brought themselves around on the, to the course two five seven, and we had followed them around, the *O'Hare*—the man that was in the U. S. S.

O'Hare was in the screen. He was in the extreme starboard end of the screen, and when we started around, well, I realized that he had the furtherest distance to go of any of the screen ships, and I had a problem of not embarrassing him or not embarrassing the heavy ships and still fetching up where I should be. So I followed various courses and speeds around the formation until I steadied up on about the same course that we were. I had used particular pains to keep him about anywhere from ten to fifteen to twenty degrees on my starboard bow. And at the same time keeping a close watch on the ships on the other side that I didn't embarass any of the heavy ships.

And like I say, we reported that we were ready to join. If I remember correctly, the answer I got to that was a "wait," which I interpreted to mean that they weren't ready [396] for me to join, which I did. Then to the best of my memory there was an order came from the screen commander to change screen formation which would give me a place to go.

I don't ever remember that signal being executed, but I do remember that the people started to move, to give me a place to go. Of course, there was plenty of room out there. I could have slid into formation and still left room on either side with the other people even if they hadn't moved, but they started to move to give me my place to go. And I had told my people and the Combat Information Center to give me a course to station, to keep me about where, from a thousand to fifteen hundred yards clear of the closest heavy ship.

I was proceeding up the starboard side from the starboard quarters so to speak, of the formation, parallel to the formation and forward into my station. I had come around and they were steaming on two five seven.

Well, I knew that my screening station was out to starboard of the formation, so I was steaming, if I'm not mistaken, two six zero. It was three degrees divergent from their course which would take me more to starboard, waiting for the orders to come, to go where I was supposed to go, and then I was told to expedite moving to a point where I could go to station, which I did. And then the formation, I was ordered to slow down. They were making fourteen knots. They were ordered to slow down from fourteen knots to [397] eight knots, and then from eight knots to five knots. Well, when one ship is behind like that, they frequently slow down to let him catch up, which I interpreted this as a logical thing, and as I came up abeam of the formation and I think I had between five and six thousand yards to go to station while they went back to fourteen knots, and I was making twenty-two knots at that time, and speed differential from eight knots to twenty-two knots would have taken me up to station in fairly respectable rate of speed, and just about the time of the last speed change, I think it was, I was ordered to continue to expedite going to position to take station, which I did; was already making twenty-two knots. That was practically what I had available. I kept one knot, I think it was, in reserve.

And if you can visualize the situation, I was coming up astern of these ships and these ships were lighted. In fact, there were a great many lights in the area. There were some ten or eleven ships present, and they were showing the normal lights that you would see on a ship at night as well as their regulation running lights, and if you approach a ship from the starboard side from aft, and you pass that ship, well, you will go through a formal sequence of events of seeing lights.

The first light you would probably see would be your masthead and range light because they have a wider arc, [398] are visible then as you come up the starboard side of that vessel, you would see his green light, and a dark night, you would see the lights, but you might not necessarily be able to determine the attitude of the vessel. You could, within limits, but if you couldn't see the hull or the superstructure, you might not be able to determine the exact attitude of that ship.

At this time I personally had no knowledge that there was a ship that was a stranger in the formation as it has been called here many times, and I think that I am reasonably safe in saying that I had a normal reason to expect that there would be no stranger there, since the rules of the road protected me on that side, and I had passed what I thought was the ship on the starboard quarter of the formation and I expected another ship to be in the position in forward bow, so to speak, of the formation, and I was watching for the sequence of lights which I spoke of, to show up.

In other words, I expected to see a ship in the position where I was watching. I was watching very carefully. And the ship that I thought was there, I discovered it was apparently closing me, which was out of all reason for him to do, and I asked the Officer of the Deck. I thought maybe I wasn't seeing things quite properly, so I asked the Officer of the Deck, I think it was. I said, "Is this ship [399] closing us?" And he said that he thought it was, and I was looking even as hard as I could at the ship. I could see the green light, masthead light and range lights. I could also see a lot of other lights like porthole lights and that sort of thing, and I looked further forward on this

vessel and I saw the bow wave of this ship and I realized that we were in terrible and imminent danger.

* * * * *

When I saw this ship closing us, my first reaction was to come to the right to give him more room. We were steaming at that time two six five which was our course to station, and I ordered him to come to two seven zero. Well, almost right away I saw that that wasn't going to be enough, so I ordered two seven five and almost immediately I ordered two seven five. Then I saw the bow wave of the ship and that is when I ordered the full right rudder and this ship never slowed down, never did anything until my bow was across his.

And sometime in that immediate interval, well, someone on the other ship sounded several short blasts on the whistle and I had been out on the wing of the bridge and I saw this ship was going to hit me. There was no [400] question about it. I didn't want to be killed. Nobody does. So I went from the wing of the bridge up into the main bridge on the ship, up into the flying bridge of the ship and there is a little door there through a bulkhead and I was standing in this door when we were hit, and I was knocked almost down. The fact that I was holding onto the bulkhead was the only thing that kept me from going sprawling.

And right away we started to take action to try to save the ship.

* * * * *

[402] Q. Will you describe for the record where the point of contact was?—A. I was struck on the port side a little aft of the amidships between frames ninety-eight and a hundred and twenty-seven. * * *

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[416] Cross-examination by Mr. CRENSHAW:

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[417] Q. Did you see or have any communication with ComTransConRon-2 on your sortie or while you were leaving Norfolk or the area?—A. Well, this is only one instance that I remember. When we were passing Cape Henry light, the squadron commander, that is, captain then, now Admiral Persons, passed me in the *Hollis* and asked me to keep clear of him to the south, which I did, and I also asked him to keep me advised of any movements that the formation might make that night.

* * * * *

[419] Q. But you were still a part of this Task Group 86.2?—A. I was a part of that organization at that time.

Q. And Captain C. N. Day, he was the Commander of Task Group 86.2?—[420] A. Yes, sir; he was, according to the best of my knowledge.

Q. Well, was he, or was he not, sir?—A. Well, it shows it in that book and I have said that to the best of my knowledge, yes.

Q. Do you have any hesitation to that fact or any reservation to testifying to that?—A. I didn't make any reservation; I said to the best of my knowledge he was.

* * * * *

[423] Q. * * * Now this, in both of these reconnaissance, or the joining, you had certain communication problems or certain things that you had to know, did you not, concerning communications? By that I mean did [424] you have any manner of keeping in touch with the group while you were on your mission, or they with you?—A. Well, of course, we were guarding the Fox broadcast, which is the screen system of promulgating messages.

Q. Now that is not a voice system?—A. That is not a voice, it is either the Cw—lets just leave it at that.

Q. Now did you contemplate the guarding of any voice radio circuit?—A. Oh, certainly.

Q. Now did you during the course of your reconnaissance mission or the proceeding from that mission back towards the formation endeavor to make a radio check or radio communication with the formation or with any of the officers in that formation?—A. Yes, sir.

Q. Were you successful?—A. To the best of my knowledge, yes, sir, because I checked—rather, I don't know whether you could say checked, but I talked on a couple of the circuits myself.

* * * * *

[425] Q. Well, the group of ships that were to the south of the formation caused that formation to turn in a northerly direction from east, rather than in a southerly direction from east, which had been their published intention; is that correct?—A. Yes, sir.

Q. Did they communicate that change of intention to you by voice radio or how did you know about it?—A. To the best of my knowledge that information was intercepted by my people on the voice radio and delivered to me.

Q. But it wasn't sent to you?—[426] A. To the best of my knowledge, no, sir.

* * * * *

Q. Now do you recall during the course of the evening calling the screen commander by radio and asking and giving him the range and bearing of the flagship and asking him if he concurred with you in that range and bearing? Do you [427] remember

doing that, sir?—A. To the best of my memory I called him twice and he called me once on that subject.

* * * * *

Q. Now what response did you secure from the Screen Commander? Do you recall that?—A. In the first two instances I believe that once I spoke with Lieutenant Campbell who was the staff watch officer, and he told me that he was unable to concur because I was in [428] the blind spot of his radar which is made by the mast of the ship, covers one small area aft.

Q. After that you continued, I assumed, to close the formation, did you not?—A. That's true.

Q. Now then you spoke of the Screen Commander calling you. Do you recall what time that was, or what he called you about?—A. Just a minute.

Q. Feel free to read it, if you'd like to, sir.—A. I continued to close and I was into about eight miles, at about two four five, I again called ComScreen and gave them my position and Lieutenant Campbell, of course, was the staff duty officer, told me he could not concur because I was in the blind spot.

Q. Now then would you continue about the Screen Commander and his request for his transmission to you?—A. According to my previous testimony at zero zero fifteen ComScreen asked me for my position and I gave it to him. It seems to me like he was about zero eight five, six or seven miles.

Q. Now at that time you observed the ships of the formation on your radar and you were coming up to join them; is that correct, is it not?—A. That's true.

* * * * *

[433] Q. Now when you left the beach in Hampton Roads, or you made your sortie, did you know at that time that the *Carter Hall* did not sail with the heavy formation?—A. No, sir; I did not know that.

Q. Did the plan that you had seen prior to sailing contemplate the *Carter Hall* sailing with that formation?—A. Yes, sir.

Q. So then that would mean that they would be one less ship, one fewer ships in the formation than you expected?—A. That's true.

Q. Were you notified anytime while you were at Camp Pendleton or while you were in the process of joining the formation that the *Carter Hall* was not with that group?—A. No, sir.

Q. When did you first hear, learn that the *Carter Hall* was not with that group, Captain Jackson?—A. We arrived back in the shipyard on Saturday; that's correct.

Q. After the collision then?

* * * * *

[434] A. I believe it was the following Monday when I learned that it wasn't there. I am not certain of that.

Q. That was, of course, after the collision?—A. That was after the collision.

* * * * *

Q. Now, Captain Jackson, there came a time after the taking aboard of this group at Camp Pendleton that you closed or became closer to this group and you reported to the Screen Commander. I believe you testified to that as being at approximately zero one three eight. Does that coincide with your recollection?—A. That is correct.

Q. Now did you send an arrival report to the *Fremont*?—A. I did.

Q. Do you remember what time you sent that?—[435] A. Well, to the best of my knowledge it was receipted for at either zero one fifty-five, or zero one

fifty-six. I don't know that it makes much difference, but——

* * * * *

Q. Is that your arrival report, Captain Jackson?—A. It constitutes two things. One is an arrival report to the Group Task Force Commander and also to their movement report to PhibLant. He was sent information on this message and PhibLant was action on it for the movement report.

[436] Q. How was that message sent?—A. By flashing light.

Q. I don't mean to encroach upon the security here, Captain, but can you tell us the text of what it says, or paraphrase it for us?—A. Well, it gives the name of the ship, its number, type, number of the units that we were reporting into, and the time that we reported in Greenwich time.

Q. What was the type of the unit to which you reported?—A. Eighty-six point two.

Q. And that is the group which Captain Day commanded?—A. True.

Q. And what was the time that that report was made?—A. Zero—zero six forty Zebra.

Q. Can you tell us what time that would be local time?—A. Well, you take five hours away from it.

Q. Would you do that for us, please.—A. Zero one forty.

Q. At zero one forty?—A. That's right.

Q. Now was that message sent to the Screen Commander?—A. No, sir; it was not. For a very simple reason, we couldn't raise him on the light.

Q. But was sent from your vessel, the *Ruchamkin,* to the *Fremont* by means of flashing light?—[437] A. That's right.

Q. How do you know where the *Fremont* was, Captain?—A. Well, we knew that she was in station zero and in the center of the heavy formation.

Q. You were careful to keep track of where they were, weren't you?—A. Well, I had—maybe not myself personally, but I was certain that other people were doing it.

Q. Now after you had made—at the time you made your arrival report to the *Fremont*, you had already reported to the *Hollis*?—A. That's right, to the best of my knowledge; yes, sir.

* * * * * *

[440] Q. Now going ahead with the reading:

"Some time thereafter in order to expedite, an order to expedite came from the Screen Commander, I believe it was, to get into a position where I could take station and I went up to twenty knots, and I was about thirty-seven miles astern of station, about zero two o three, the *Ruchamkin* increased speed to twenty-two knots. On course two six five, I believe that has been previously brought out, and at zero two zero five approximately, I don't remember these times myself, that was determined later, the Task Group or movement element slowed to eight knots and to five knots at zero two o six. In the meantime, the word I got at o two o three, and I believe the way it was worded was to continue to expedite taking station. They went to eight knots, to five knots, and back to fourteen knots. Now it sometimes happens when you have one ship out of station like that and sometimes in joining up, the formation will slow down and let him get on up there, and that was the way I interpreted that slow down. As I got moving along my movement line, here, they went back to fourteen knots, and as far as I was concerned that was still perfectly normal because I was coming up abeam of them. I had about six thousand

yards to go and I was making twenty-two knots and I had informed the Screen Commander that I was making twenty-two knots, and which would have given me, well, it's an eight knot differential which would have taken me up there at a pretty good clip. It [441] was about zero two ten or zero two twelve when I got the last expedite. As far as I was able to determine I was coming up here and I could see a great many lights over in this area here to my port. I could see the lights from the ships in the main body, which included cargo lights, porthole lights and mast lights, or what you have from this formation, and at about I guess zero two one three I sighted a ship which I believed to be this ship."

* * * * *

Q. Now, Captain, in this testimony then there was a time at which you were told by the Screen Commander to wait, and you did wait. There was a time that you were told by the Screen Commander to expedite, and you did expedite. And there was a time that you were told by the Screen Commander to continue to expedite and you continued to expedite; is that correct?—[442] A. That's true.

Q. Captain, at any of those times, did you know where the *Washington* was?—A. No, sir; I didn't know the *Washington* even existed at that time. Let alone where it was.

Q. Now after you came on up into the formation——A. Please, I didn't ever go into formation. I was out on the starboard side.

Q. You never took your station in the formation; is that correct?—A. Well, we speak of the formation in the screen and you have a screen formation and you have the main body formation. I never got into the formation as you are referring to it.

Q. Now, Captain, in order to clarify that—words are somewhat important in this, and when you say the formation, do you mean the ships that were in this position here?—A. That's right.

Q. And you do not mean any of these vessels?—A. That's right. That is the screen.

Q. So that for the purpose of clarity when you say formation you do not mean screen? I just want to understand you, sir.—A. You have the main body and formation, and you have the screen formation usually spoken of as the formation in the screen.

[443] Q. That is your understanding of it, is it not?—A. Yes, sir. Of course, if you were impersonal and not a part of it, you might refer to the whole thing as a formation too, but it's common terminology to speak of it as I did. I just wanted to make sure that I understood you before we went any further. That was all.

* * * * *

[455] Q. Now when you first sighted the lights that developed to be the *Washington,* at approximately eight hundred yards, did you recognize then the danger which I think you have described as terrible and imminent?—A. No; sir; not immediately.

* * * * *

[456] Q. When you saw two white lights which you assumed to be the masthead and running lights of the vessel and the green light which you assumed to be the running light of a vessel, do you remember whether you made a conscious effort to tell which light was lower than the other of the two white lights that you sighted?—A. Well, obviously, your—if what I saw, the running, the masthead light was lower than the running light—[457] have to be—well, if you look at a ship, like so, well, here would be your running light, your masthead light and your side light. If you came

up from astern, you would see it exactly the same sequence of lights.

Q. That's right, so you saw what you expected to see?—A. Exactly.

Q. A light which you thought was a ship in the formation?—A. That's right.

* * * * *

[460] Q. Captain, do you know why you didn't sight the *Washington* earlier than this minute, minute and fifteen seconds or this thirty seconds that you have testified to?—A. I believe that once before in this, either in the [461] Coast Guard Inquiry——

Q. Captain, if you would simply answer the question it would be of great help to us.—A. That is exactly what I was trying to do, if you will permit me. Stated once before that I did not know exactly why it was not picked up. Now I think I can offer an explanation which may be pertinent, been referred to before, if you must realize that there were several other ships in the immediate vicinity, all of which were showing their lights. Also you must remember that the ship we now know to be the *Capricornus* was for a considerable period of time between me and the *Washington*. Also that these, all of these ships that I was passing, as I passed them, were showing similar lights to the *Washington*. Also that there were a great many lights over there and to pick out any one individual set of lights particularly when you didn't know that there was a stranger there, would have been most difficult.

Q. So that the *Washington*'s lights were obscured or confused from your point of view because of the presence of these other vessels; is that correct?—A. That is true.

Q. And similarly your lights would be so obscured or confused from her standpoint, looking to you,

would it not? Would they not?—[462] A. It's possible. However, he had a much better opportunity to see than I did because he was only after, particularly after he had gone about, had gone about half way.

Q. Where would half way be?—A. Let's say after he passed the *Capricornus*. I mean not the *Capricornus*, but the *Glynn*.

Q. After he passed you, didn't see him until after he passed the *Capricornus*, the *Washington*?—A. No, sir.

Q. But you think he should have seen you before he passed the *Capricorus;* is that correct?—A. I said it was possible. I said that he had a better chance. I didn't say that he did.

Q. Well, now, you knew what those ships were, or where they were supposed to be, did you not, that you were passing?—A. Approximately; yes, sir.

Q. Do you think the *Washington* would have known where they were supposed to be as they approached?—A. No, sir.

Q. Now, Captain, your radar was on during this approach, was it not?—A. That's true.

Q. It was being manned in CIC as well as on the bridge, or it was in CIC as well as on the bridge?—A. Well, of course, I can't testify as to what went on [463] one deck below me, but I had reason to believe that it was.

Q. Didn't you say that you read Mr. Hirshman's testimony?—A. I did.

Q. Didn't Mr. Hirshman testify quite amply that the radar was on in CIC?—A. You asked me did I see the radar on one deck below me. I said no, and I didn't.

Q. Captain, the question was if it was on.—A. Yes, I said I had reason to believe that it was.

Q. Now did you observe the P. P. I. scope on the bridge?—A. At various times during the evening; yes, sir.

Q. Did that show indications that that indicator was on, was it or not?—A. That is true.

Q. That is simply remote for the instrument that was in CIC?—A. It is a repeater.

Q. It couldn't be on independently of the CIC radar, could it?—A. Could not. I already stated that I had reason to believe that the radar was on.

Q. As you approached this formation, Captain, do you recall when approximately you might have looked at your radar on the bridge?—[464] A. I don't remember any specific instances. I remember that I had looked at it. It was perfectly normal for captain on the bridge to observe the radar. I don't remember the exact instant I was looking at my watch and saying just looked at the radar. No, sir. But I had been looking at it during the course of the evening.

Q. Do you think, do you recall looking at it after the formation changed course from two seven o to two five seven?—A. Can't answer that because I don't know.

Q. Do you recall what scale the radar was on when you looked at it?—A. The last time I remember checking it myself was on twenty mile scale.

Q. Now when you looked at it, do you recall seeing any, or do you recall how many contacts or PIP's or, which would represent vessels that you might have seen in that radar?—A. No, sir; I don't.

Q. Do you recall whether or not you counted them at the time?—A. No, sir.

Q. Do you know if you had any of your officers on the bridge observe the radar to detect if there were any extra contacts in the formation to which you were

approaching?—[465] A. Of my own knowledge I don't know, but I have been told that the Combat ran a PIP count and came out with the right answer.

Q. Excuse me?—A. I said I have been told that Combat ran a PIP count and came out with the right answers. The *Carter Hall* was missing.

Q. Now I believe you testified before the Court of Inquiry that you looked at your repeater between ten minutes of two and thirteen minutes after two. Specifically, for your assistance, it is at page 59.

Now would you mind reading the answer that you gave to that question?—A. Where? What question?

Q. Question 45. Please read the question and the answer.—A. Says, "Well, then when you looked at your radar repeater between zero one fifty and zero two thirty did the formation have normal appearance, look normal to you or not?"

Q. Excuse me, but this lady has to copy this down. If you could slow down just a little bit.—A. The answer I gave, "I wouldn't say that it did." I have a brief explanation for that, if you would [466] care to hear it.

I had no knowledge of the fact that the *Carter Hall* had failed to go out that night. If we had taken a ship count, we would have come up with the right number of ships. The ships appeared to be, I would say, in a twelve mile scale except for maybe short intervals and the appearance of the formation, as you can imagine, of several ships very close together, it looks like, shall we say, a cluster of grapes. It would have been very difficult for me to have picked out one ship amongst them.

* * * * *

[467] Q. Now, Captain, if your radar on the bridge had have been on say the ten mile scale, do you think it would have been easier or more difficult to as-

certain the position of the [468] individual ships of the formation to which you were approaching?—A. It is possible.

Q. Would it have been easier or more difficult, sir?—A. It is possible it would have been easier.

Q. Captain, don't you as a fact know it would have been easier?—A. Well, I am not going to come down and make a hard and fast statement about whether I could have picked up the *Washington* if I had been on a ten mile scale or not, because I don't know. That is what you're trying to ask me and I will give you the answer to the question.

Q. Captain, I think you are assuming a little bit, but would not the fact that you shifted from the twenty mile to the ten mile scale, in effect enlarge the picture and tend to separate the contacts?—A. True.

* * * * *

[470] Q. Now, Captain, as you came up on this formation to take your station, you have testified, I believe, that the observations of the lights were as you anticipated them to be; there was nothing eccentric or abnormal [471] about the appearance of that, you say; is that correct?—A. That's right.

Q. Had you received any warning or any indication from any other vessel in that naval formation including the screening vessels that there was anything in that formation or amongst those vessels that would cause you any danger?—A. No, sir; I had not. I had no idea he was there until I actually saw him myself.

Q. Would you have continued on up there, Captain, at that speed if you had have known he was in there?—A. Sir, if I had known there was a merchant in the formation I would have turned around and gone the other way.

Q. Now, Captain, I understand you kept Gorenc, your most experienced radarman, on watch in CIC from his normal eight to twelve watch to assist you in performing this maneuver; is that correct?—A. That's correct.

Q. Did you feel that you needed Gorenc in CIC to do this job that you had assigned to you?—A. I wanted the best available man I had down there and that was Gorenc, and I put him down there, which was my prerogative.

Q. How many other men were down there, Captain?—A. To the best of my knowledge, two.

Q. How many radio circuits had to be guarded in CIC?—[472] A. Well, there were either five or six. I don't remember which.

Q. In your opinion, Captain, could these three men man the radars, plot, communicate with the bridge and effectively guard those radio circuits?—A. Not as effectively as I would have liked. That is why I kept Gorenc there.

Q. Don't you think that your Screen Commander knew that?—A. What do you mean, sir?

Q. That you had limited personnel to guard all those radio circuits?—A. He knew that; yes, sir.

Q. Didn't your group commander on the *Fremont* know that?—A. Now that I don't know.

* * * * *

[473] Q. Captain, as you came up on the right-hand side of this formation under the order of your Screen Commander to expedite and to move into your, close the formation, or whatever the terminology is, would you have expected him to warn you of a danger about which he knew?—[474] A. Yes, sir..

Q. And did he warn you?—A. To the best of my knowledge—no, sir.

Q. Now would you have expected the O. T. C. to warn you of something in the formation that could cause you danger?—A. Provided he knew I was there.

Q. And he similarly did not warn you, did he?—A. No, sir; and he also swore that he did not know I was there.

Q. Well now, Captain, you had reported in to his flagship, had you not?—A. I had.

Q. And that was all that the Operation Order had intended for you to do with respect to this flagship, was it not?—A. So far as I know; yes, sir.

Q. Do you know any reason why he would not have known that you were there.—A. No, sir.

Q. You signaled his vessel visually from your own, did you not?—A. I did.

Q. You didn't have any trouble finding his ship, did you, Captain?—A. No, sir.

Q. And you kept track of them throughout the night, [475] didn't you?—A. Well, I wouldn't say throughout the night; no, sir, because——

Q. After you left that beach, you took pains to know where they were, didn't you, sir?—A. Yes, sir; but I was concentrating on him while I was concentrating on something else.

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Excerpts From Testimony of Charles W. Ellard, a Witness for the Government

[480] Direct examination by Mr. McGOVERN:

Q. Now, Mr. Ellard, you are presently stationed on a ship at Norfolk?—A. Waiting transfer to a ship.

* * * * *

Q. Now you're still a member of the United States Navy?—A. Yes, sir.

Q. Were you in the United States Navy in November, 1952?—[481] A. Yes, sir.

Q. On what ship were you?—A. *Ruchamkin.*

Q. Now were you on watch on the *Ruchamkin* on the night when she had a collision with another vessel?—A. Yes, sir.

Q. What was your position?—A. Starboard lookout.

Q. Now that's on the starboard, or right side of the bridge?—A. Yes, sir.

Q. Now could you show us in that diagram of the bridge which is the Government's Exhibit No. 16, putting your "E" for your last name in the place where you were, indicating the extreme right-hand side of the bridge; is that correct?—A. Yes, sir.

Q. Now, what is your location with respect to the starboard running light?—A. I was standing just behind it.

Q. Did you, as part of your duties, check the starboard running light?—A. Yes, sir.

Q. At what time did you check it?—A. Either before two or a little after two. I just don't know what to show it.

[482] Q. Was the light burning bright?—A. Yes.

Q. Now what was the area which as starboard lookout you were supposed to search—A. From her bow to the stern of that whole area of that ship, side of the ship.

Q. That's from the bow down your right hand to the stern?—A. Yes, a hundred and eighty degrees.

Q. Now when was the first time that you had any notice that a stranger vessel was approaching your vessel?—A. I guess when those blasts of the whistle.

Q. Whose whistle?—A. *Washington's.*

Q. About how long before the collision?—A. It was less than a minute.

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Excerpts From Testimony of Ernest Boghosian, a Witness for the Government

[483] Direct examination by Mr. McGovern:

Q. Mr. Boghosian, you're an electrical engineer?—A. Yes.

Q. Where did you go to school?—A. University of Pennsylvania.

Q. When did you graduate?—A. 1941.

Q. Do you work for the Navy Department?—A. Yes.

[484] Q. In what capacity?—A. Electrical engineer.

Q. Have you been doing any work for the Navy Department with respect to lights and visibility of lights on ships?—A. Yes, I have been their lighting specialist since 1946.

Q. Have you at my request read the testimony of a sailor named George Jere and another sailor named Blackman?—A. Yes.

Q. B-l-a-c-k-m-a-n. They were the signalmen?—A. Yes.

Q. Are you familiar with the kind of signaling device which they testified they used?—A. Yes.

Q. Tell us about the signaling device.—A. The twelve-inch signaling searchlight is the searchlight most used by Navy for visual communication both daytime and nighttime. It is a light that uses a thousand watt lamp and a twelve-inch reflector. Does that answer your question?

Q. Is it reduced?—A. The light has means for reducing the intensity of the light output by stopping the opening down to six inches with a six-inch hood and the purpose of this hood and reducer is to prevent blindness on the part of receiver in short [485] signaling ranges. The Navy found that it was necessary to do this in order that signaling at night at short ranges would be accurate.

Q. Now, assuming that there is no fog, how far should a reduced searchlight of the type testified to by Jere and Blackman have been visible?—A. Well, I'd say seven to ten miles, would vary with different ampering conditions.

Q. In the course of matters which you have not read there has been a suggestion made on behalf of one of interest in this case that the twenty-four-inch searchlight should have been used for signaling instead of the twelve-inch searchlight. Could you give us your views on that?—A. Well, the Navy normally don't use the twenty-four-inch light for short-range nighttime signaling, and the reason is as I explained previously; with the twelve-inch light we have to reducing the light output down in order for the receiver not to be blinded by the light. Now light up, twenty-four-inch light, is roughly, oh, maybe a hundred times the twelve-inch light so obviously the blinding effect would be far worse.

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Excerpts From Testimony of Joseph J. Cwalina, a Witness for the Government.

[487] Direct examination by Mr. McGOVERN:

Q. Mr. Cwalina, were you in charge of the engine room on the U. S. S. *Buchanan* on the night she had a collision with the tanker *Washington*, were you not?—A. Yes.

Q. How long have you been in the Navy?—A. About eighteen and a half years now.

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[488] Q. Now, what speed were your engines going at the time of the collision between the tanker?—A. Going at three hundred sixty-five r. p. m., which represents roughly about twenty-two knots.

Q. How long had they been going at that r. p. m.?—A. For approximately nine or ten minutes.

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Excerpts From Testimony of Theodore Milan Slabey, a Witness for the Government

[489] Direct examination by Mr. McGOVERN:

Q. Mr. Slabey, where are you presently stationed?—A. I am assigned to the Office of Chief of Naval Operations.

Q. Now during the night of 13-14 November, 1952, where were you assigned?—A. I was the communications officer on the staff of Commander Transport Control Squadron Two in the *Hollis*. I was standing watch in the C. I. C. of the *Hollis*.

Q. How was the C. I. C. of the *Hollis* manned at that [490] time?—A. To the best of my memory besides myself, and I was there on specific duties assigned me by the Screen Commander, there were either—there was a Chief Petty Officer and there were either two or three other enlisted men of the *Hollis* ships company.

Q. Did the radar room of the *Hollis* perform efficiently?—A. In my opinion: yes.

Q. Now getting back to the communications questions which were, have you heard the questions regarding communications which were asked of Captain Jackson?—A. I did hear them.

Q. Now would you tell us about the communications set up and the use of the words guarding a net or guarding a communication.—A. Now in Navy terminology the term guard means maintain a listening watch on a receiver, keep a complete log and have a transmitter ready for instantaneous use. In the case of the communications that night not all of the circuits which have been talked about in this court

were required to be guarded. For example, some of the circuits required only a received watch to listen to and not necessarily a transmitter to answer.

Q. Now were you plotting the vessel which was later determined to be the tanker on the night of the collision?—[491] A. I was not myself, but the people who were assigned that did it. * * *

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Q. Now on the morning of November 14 did you have occasion to send messages of the *Corry* and the *Lloyd* directing them to maneuver as necessary to avoid shipping?—A. I did.

Q. How did you send these messages?—A. Over the secondary screen common circuit which was in the CIC of the *Hollis*.

[492] Q. Were both the messages that you sent to the *Corry* and *Lloyd* receipted for by the ships?—A. They were.

Q. Did you have occasion to send a signal to the screen and to the *Ruchamkin* directing a formation of a five-ship screen?—A. I did.

Q. On what circuit was that sent?—A. That was also sent on the screen common secondary.

Q. I see. Now did you get a receipt for this signal from the *Ruchamkin*?—A. No.

Q. Did you get a receipt from the other ships—A. I did.

Q. What, if anything, did you do then?—A. I called the *Ruchamkin* and asked them if they had received my signal. They requested me to repeat the signal, to say it again. I did that and in reply I heard a loud squeal and a babble, sort of voices on the speaker. I called *Ruchamkin* and said, Say again what you have just said, and they came back with "We are rammed," and words to the effect we are sinking, save us, or help us. I can remember exactly

the words "We are rammed," but the rest of it is to the effect.

The COURT. What was the message sent out?

[493] The WITNESS. The message I sent out was "execute to follow," and then a signal which the meaning of which was from a five screen, five-ship screen. Now it was addressed to the members of the screen and the expression "execute to follow" is a strict procedure in the Navy which means do not do this until you receive my command at a later time. In other words, the signal was not to call for immediate action.

By Mr. MCGOVERN:

Q. Now getting back to your plot of the target, rather the contact which is sometimes called Old Raid Shugar, or New Raid Fox, did you plot this contact?—A. I didn't hear you, sir.

Q. I am sorry. Was this contact plotted by the radar room of the *Hollis* while you were there?—A. It was.

Q. What was the track as shown by your plot?—A. As I remember it, it was approximately at a relative angle of approximately thirty degrees. In other words, the relative track of the plot came through the screen at an angle of thirty degrees. Zero three zero.

Q. Would you explain that a little more carefully. Your heading is as zero, aren't you?—A. No.

[494] Q. O. K.—A. Taking the ships heading as approximately west two seven o, the track of the contact had an angle of about zero three zero. In other words, thirty degrees to the east of north. Does that——

The COURT. Where are you measuring that angle from, Lieutenant?

The WITNESS. From the north, Your Honor.

The COURT. From the north. You are not measuring from the line in which the ships were steaming?

The WITNESS. No, sir.

The COURT. All right, sir.

By Mr. McGOVERN:

Q. Do you think we understand it now, or do you want to tell us again?—A. In other words, the track came from the southern part of the ocean at an angle of thirty degrees of north through the screen.

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Q. Now was the CIC of the *Hollis* plotting the *Ruchamkin* as she closed the screen?—[485] A. To my knowledge, they were not.

Q. Now, why not, if you know?—A. Because the *Ruchamkin* for a large part of the time was in the radar shadow of the *Hollis* and could not be picked up or only picked up intermittently on the radar.

Q. What do you mean by intermittently on the radar?—A. From time to time it would come through as a very weak PIP, or occasion, perhaps as a tiny smudge, something of that sort, depending upon the yawing of the ship, the motion of the ship in the water.

Q. Now tell us about the radar shadow.—A. The radar antenna on this class of ship is mounted in front of the mast and so, of course, there is to the stern of the ship always a small sector in which targets cannot be picked up because the mast blocks off the radar beams. From time to time the targets are picked up as the ships heading changes, perhaps in a seaway or change of course or signal, steering errors will help.

Q. Now did your vessel have intermittent contacts of the type you described with the *Ruchamkin*?—A. I can't remember. I should think so.

Q. Now did the track of the *Washington* and the track of the *Ruchamkin* indicate a probability that these two ships might collide?—A. Not to my knowledge, but I was not carefully watching [496] the tracks of the two.

Q. Insofar as you had knowledge of the tracks of the two vessels?—A. Insofar as I had knowledge of them.

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Cross-examination by Mr. CRENSHAW:

[502] Q. What I am trying to find out, Lieutenant Slabey, and I realize you're in somewhat of a disadvantage but does this line that you have drawn on this maneuvering board represent to you the way you recall the relative motion line of the *Washington* as she came into this formation?—A. On the whole, yes. This relative movement line would be approximately zero four five, zero four eight, instead of the zero three zero which I stated. However, that was my memory from a view of a plotting board which was erased some time during the night of 14 November.

Q. So that your recollection would place that relative movement line further ahead of the formation?—A. Not further ahead. It would place it at an angle differing by fifteen degrees.

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[504] Q. Now you have testified on your direct examination that you had difficulty in following the *Ruchamkin* because of this blind area in the stern of your vessel. Is that correct?—A. I have testified that. Yes.

Q. At the time you did at least remember your C. I. C. having at least one position on the *Ruchamkin* within, say, a half or three-quarters of an hour of

the collision, do you not?—A. I do not remember a specific plot of the *Ruchamkin* at a specific time.

Q. Do you remember——A. I, I know there should have been.

Q. Do you remember if there were any obtained during that time?—A. To the best of my knowledge, yes.

Q. Once you had obtained that, you knew where the *Ruchamkin* was to go, did you not?—A. I don't understand your question. Do you mean the position in the screen?

Q. If you knew where she was at one time, say, a quarter of two, would you know where she was to go? Were you [505] familiar with where she was to go?—A. I knew where she was to go, regardless of where she was at any time.

Q. So that if you knew where she was at any time and if you knew where she had to go, you would know how she had to get there in general?—A. In general.

Q. Did you at any time, the Screen Commander, request any other vessel to assist you in keeping track or plotting the *Ruchamkin* because of your disability in keeping a track of her because of your radar interference or your blind spot?—A. Did you say did I request that?

Q. Or did your vessel request it?—A. Not to my knowledge.

Q. Do you know whether it is customary to make such a request if your vessel were not able to hold that contact?—A. Conceivably, yes, but the other ships in the formation would be in the same position in regard to the radar shadow.

Q. Well, now let's look at this diagram for a moment. If the *Ruchamkin* were approaching from down here astern of the *Hollis,* she would not be

astern of the *O'Hare,* would she? Within the radar shadow?—A. Apparently, the answer to your question is "No." However, the radar shadow is not just one fine line but a [506] sector of shadow.

Q. Suppose you were in a screen, Mr. Slabey, and a submarine came up behind there, would the Navy just throw up its hands because of a blind spot, and allow the attack to be consummated?—A. Why, of course not.

Q. You could keep track of it if you really wanted to?—A. Yes, and the way to keep track of it would be by performing a maneuver known as fishtailing. In other words, changing the heading of the ship so that the shadow swings past the contact.

Q. So that it was within the power of the *Hollis* to keep track of that contact if it had so seen fit to do?—A. Can you——

Q. Perhaps the question is a little unfair to you, but——A. The reason is that, almost, the reason—I hesitate to answer, is that almost anything is within power, if they see fit to do so, they could have put a boat down in the water and gone back to look at the *Ruchamkin.* It was possible, I imagine, for a ship in the condition in the radar shadow configuration of the *Hollis* to keep track of a vessel.

Q. It would be possible to ask the *O'Hare* to do it, it would be possible to ask the *Corry* to do it, would it not?—A. It would.

Q. You had ample authority to do that, if you desired, [507] your vessel, with the Screen Commander aboard?—A. He did.

Q. And he could have done it by fishtailing?—A. He could have. There were other considerations.

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Excerpts From Testimony of George G. Jarboe, a Witness for the Government

[515] Direct examination by Mr. McGOVERN:

Q. Were you a member of the United States Navy in November, 1952?—A. Yes, sir.

Q. What ship were you attached to?—A. I was attached to the U. S. S. *Ruchamkin*.

Q. In what capacity?—[516] A. I was Assistant Damage Control Officer and Assistant Engineering Officer.

Q. Were you—what was your rank at that time?—A. Ensign.

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Q. Now, Mr. Jarboe, were you on the deck watch of the *Ruchamkin* on the night in which she had a collision with a tanker?—A. Yes, sir; I was Junior Officer of the Deck.

Q. Where you standing the watch?—A. Partly on the open bridge and out on the wing, her wings, and once in a while I'd go down to the pilothouse which is just a few steps from the open bridge.

Q. Now, where was the radar P. P. I. scope on it; in the pilothouse or on the open bridge?—A. It was on the open bridge, slightly to the right of the center line in the forward part of the open bridge.

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[517] Q. Now I hope we have got your factual situation clear. Could you go through it again and tell us simply as you can what you were doing? You had a P. P. I. scope at one part of the bridge. Then you'd walk over to the other side and [518] actually look at the ships?—A. Yes, sir.

Q. And you were doing something with the different information you had; one information coming

through your eyes, and the other information coming through the scope?—A. Yes, sir.

Q. Could you tell us, who are not engineers, just what you were doing?—A. Well, it was a very dark night and there were many lights over a wide arc on the horizon and it was impossible to make out the silhouettes of the ships or their hulls, and I was trying to picture which lights would belong to which ships, inasmuch as some of the ships were overlapping from our position, so I would go over and study the picture on the radarscope and try to picture in my mind which ones were the ships, the main body, for instance, and which ones were in the screen.

Q. Then you'd go back to the radarscope and what would you do then?—A. Well, I'd see if the picture had changed, or if our relative position had changed enough to reorient any of the ships.

Q. Now did you have the formation planned so you knew where the ships would be, if they were all in the formation as the formation had originally been planned?—A. Yes, sir.

[519] Q. Now what were you doing at the time that you had the first notice of the approach of the tanker *Washington*?—A. Do you mean when I first realized that it was the *Washington*?

Q. I am sorry. When you first had notice of the approach of a vessel which later turned out to be the *Washington*. I mean the first notice you had, not of the ship which collided with you as the ship, but of a ship which you now know is the ship that collided with you.—A. Well, sir, I had been picturing, been watching the lights, and I had gone down, right after the course—I mean the speed had changed several times—I had gone down to the pilothouse and drawn, set up a maneuvering board with the positions of the ships oriented as they were at the latest times. When

I went down below and got our positions from the guide. I had looked at the radarscope and got that myself and went down and just to get the overall picture and to check the solution that we had gotten from CIC. And to make sure that we were clear the main body of the formation. We had planned to pass, oh, a thousand to fifteen hundred yards to the right side of the formation and I had just walked back to the bridge, and I looked out to the port and I saw several lights over there that apparently stood out from the rest as being a particular ship, and in my own mind I thought that was the nearest ship in the main body that we were to pass [520] alongside. And at that time I walked over to the other side of the bridge, laid down my papers, and turned around and walked back over to the left-hand side, which is close to where the Captain was standing and looked out again to check on the ships over there, and about the time I had studied it for just a few seconds and determined what the picture was, the Captain said words to the effect, What's that ship doing, or is he closing us, or something to that effect, and about the time I realized that he was, the Captain said come right, I think first he said, gave a course, and then shortly after that, only a matter of a few seconds, he gave hard right rudder.

Q. Now what was your estimate of the time in minutes between the time when you recognized this vessel as being separate from the main body and the time of the collision?—A. Well, the first time that I realized he was a separate ship was possibly a minute. However, at that time I thought he was on the squadron course—I mean the formation course which is roughly parallel to ours.

Q. Let me go back in your memory still further. About how much time was it in minutes between the

time of the collision and the time when you first noticed this vessel and at a time when you still thought that the vessel was a vessel in the formation but you had noticed it as a separate vessel?—[521] A. Well, that was after I had come out from the pilothouse and probably not more than a minute before the collision. I believe I estimated the range at that time previously as about a thousand yards.

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Cross-examination by Mr. CRENSHAW:

[524] Q. Did you hear any conversation about the lights of the vessel which developed to be the *Washington* when you first came out after working your maneuvering board solution?—A. No, sir.

Q. Did you hear no comment as to that at that time?—A. No, sir; apparently the impression was the same as mine, that it was just one of the ships of the main body which was on an almost parallel course, and we had expected to pass it at about that range, so nobody was alarmed at the presence of the ship.

Q. Now do you know of your own knowledge whether the *Carter Hall* was there at this time?—A. No, sir.

Q. Do you recall making a count of the contacts on your radar scope to try to identify each one of them?—A. I didn't make a count.

Q. Would you say that you were doing this comparing of [525] lights and radar and vice versa as early as two o'clock?—A. Yes, sir.

Q. Would you say that you were doing it at ten minutes of two?—A. Yes, sir.

Q. And neither of those times do you recall seeing anything additional in the formation that you didn't expect to see there?—A. No, sir. But it would have been very possible for it to have been there and not to have been noticed because there were probably, oh,

thirty or thirty-five lights across the horizon there.

Q. So did you attribute the confusion of these numbers of lights as the reason you didn't see the *Washington* until this late time?—A. Yes, sir; because apparently the *Washington* came from a relative bearing which from us would have been directly in the area where all these lights were.

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Excerpts From Testimony of George H. Whiting, a Witness for the Government

[530] Direct examination by Mr. McGOVERN:

Q. Captain Whiting, where do you live?—A. I live in Norfolk, Virginia, sir.

Q. How long have you been in the Navy?—A. I have been commissioned since June, 1936.

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[531] Q. Were you a Commander at the time of the accident between the tanker *Washington* and the *Ruchamkin*?—A. Yes, sir; I was.

Q. What were you assigned to; what duty were you assigned at that time?—A. At that time I was Chief Staff Officer, Operations and Plans Officer on the staff of Commander, Transport Division 22, Captain Day.

Q. Now, Captain Whiting, we have produced you today in response to a telegram from the counsel for the Texas Company, after we provided them with your testimony before the Navy Board of Investigation, and accordingly there is only one matter on which I want to direct your attention on my examination. That is, were there any limitations on the beaches along the Atlantic Coast which could be used for amphibious training operations of the type which was involved in Operation Seascape?—A. There were only two beaches on the entire Atlantic Coast which were suitable for this purpose. Those were the beaches at

Camp Pendleton, Virginia, just south of Virginia Beach, and the beaches of Onslow Beach, North Carolina, near Camp Lejeune, North Carolina.

Q. One beach is above Hatteras and the other beach is below Hatteras?—A. Camp Lejeune, the beaches at Onslow I believe are [532] just below Cape Lookout, I believe it is.

Q. I am sorry. I am sorry.

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Cross-examination by Mr. CRENSHAW:

[542] Q. Did you say you had difficulty in transmission? Was that difficulty in getting your tactical messages out throughout the course of the evening, or—— A. We had some difficulty throughout the course of the evening in getting ships to acknowledge receipt of messages.

Q. Now if you would send them a message, you were here when Mr. Slabey was on the stand, and he outlined very clearly how he would keep going to try to get that ship to answer up—would that be what you would do in connection with these tactical messages, if you were; if you did not get a Roger; would you persist in calling the ship?—A. Not necessary. Not necessary to get Rogers from every ship in the formation. Usually designate ships, certain ones; if one of the ships that has been designated to Roger for the message doesn't answer, the way I would do it would be to call him again. If he didn't answer then, I would call him on another circuit and expect to get an answer that way.

Q. Well, now, Captain, to be clear about it, you don't, when you send out a message, you didn't ask for everybody to acknowledge, but just a selected few. That is correct, is it [543] not?—A. That is one way of doing it, sir.

Q. Well, how were you doing it this night?—A. He would normally ask for certain ships in the formation to Roger, as I recall.

Q. Then when you say that you were having difficulty getting Rogers back from those ships, that would mean ships that you had designated to answer had not answered up; is that correct?—A. Yes, sir.

Q. And then do you recall whether or not you would call them again, or try again to get that message through to them?—A. Yes, sir.

Q. Now the reason behind that is to insure receipt by that vessel of the particular message, is it not?—A. That is correct, sir.

Q. And the only way you know they got it is if they answer up and acknowledge receipt of it?—A. Yes, sir.

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[544] Q. Now when you navigate this formation, you have testified that there are only two beaches that are available to you, or to the Navy for this type of exercise; is that correct?—A. Only two beaches available that are suitable for this type of exercise.

Q. Now this particular beach that was chosen, Camp Pendleton, is right off a very busy marine intersection, or area; that is, there is a great deal of shipping in it, is it not?—A. There is considerable shipping around Hampton Roads entrance; yes, sir.

Q. You were aware of that on this particular night, were you not?—A. Yes, sir.

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[549] Q. Would you say, sir, that it is a dangerous thing in itself when a stranger vessel comes inside of a naval formation?—A. Yes, sir; I would.

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[551] Q. Now is it dangerous for a vessel to come into formation regardless of whether it comes in from the left or the right of the formation; is it just as dangerous to have it there?—A. If it is inside the formation, it is dangerous either way, sir.

Q. So that so far as it being a dangerous thing to do, it doesn't matter where the ship comes from with respect to your formation; it is still going to create a dangerous situation if it gets in; is that right?—A. Once it's inside the formation, particularly if it's going to come close to the main body, it is dangerous. I think there would be situations where a stranger could cross [552] just inside the outermost screening vessel and it wouldn't be particularly dangerous.

Q. Then, you'd have positions of relative danger then. Some places in there are less dangerous than others; is that correct?—A. Yes.

Q. And the most dangerous place would be right in the middle, wouldn't it?—A. In the middle of the main body.

Q. Yes, sir.—A. That would be very dangerous.

Q. Now on this particular night, when do you recall having knowledge of the whereabouts of the *Washington*?—A. It was within a minute or two after we had changed course to two five seven.

Q. Do you have any recollection of the range; was that the six point seven miles?—A. As I recall it was a range about that time, sir.

Q. Approximately, when, Captain Whiting, did you have first knowledge of the position of the *Ruchamkin*?—A. The first knowledge that I had that the *Ruchamkin* was close to the formation was at the time of the collision, sir.

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[558] Q. Well, can you tell me what the Group Commander or the O. T. C., Captain Day, was doing to keep himself informed of the whereabouts of the *Ruchamkin* which he obviously expected to rejoin his formation?—A. He asked the Screen Commander to give him a position of the *Ruchamkin,* sir, and the Screen Commander did, and——

Q. Then in your mind then that would be sufficient to locate the *Ruchamkin?*—[559] A. Ordinarily it would, sir.

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[578] Q. Now as you were on the bridge when the *Washington* was coming into your formation through the screening vessels, do you recall a conversation by Captain Day, between Captain Day and any other of his staff officers, yourself included, concerning his intentions to slow?—A. Yes, sir.

Q. What was the text of that conversation or the essence of that conversation, to the best of your recollection, Captain Whiting?—A. Captain Day discussed that with me and asked my advice on whether or not we should slow, and I told him that I thought slowing was the most reasonable procedure to cause the *Washington* to pass ahead of the main body.

Q. Now do you remember when that conversation took place?—A. Well, it was apparently—it had to have been between about one-fifty and two o'clock, sir.

Q. At that time did you discuss turning to the right?—A. No, sir.

Q. Did you discuss getting back on two seven o?—A. No, sir.

[579] Q. Did you consider how your aspect might be from the oncoming tanker if you had have done any of these things? The picture that would have been presented to him, Captain Whiting?—A. I

turned those things over in my mind as to whether or not we should turn right, turn left or slow down, and I decided at that time that the correct procedure would be to slow down.

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Excerpts from Depositions of Theodore Allen Jore, Jr., Witness for the United States of America, Taken at Washington, D. C., on July 16, 1954

[3] Direct examination by Mr. McGOVERN:

1. Q. Please give the reporter your name and your home address.—A. My name is Theodore Allen Jore, Jr. My home is in Norfolk at the present time—314 Green Street, Norfolk, Virginia.

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2. Q. How old are you, Mr. Jore?—A. Twenty-eight years old.

3. Q. How long have you been going to sea?—A. Would it be permissible to give the time in service?

4. Q. Yes.—A. I served from November, 1943, to April, 1946; and then again from January, 1951, to the present time. I am still in the service.

5. Q. In what service?—A. The United States Navy.

[4] 6. Q. Are you still in the United States Navy?—A. That is correct.

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8. Q. What is your position or rank in the United States Navy?—A. Quartermaster First Class.

9. Q. Were you attached to the signal watch on the U. S. S. *Fremont* during the first part of November, 1952?—A. That is correct.

10. Q. Were you on the signal watch of the *Fremont* during the night when a collision occurred between a vessel which was associated with the *Fremont*

and a merchant vessel?—A. I had midnight to four o'clock in the morning watch.

11. Q. Now, where were you standing that watch?—A. On the 0–5 level of the U. S. S. *Fremont*.

12. Q. What is the 0–5 level of the U. S. S. *Fremont?*—A. It is referred to as the flag bridge on board ship.

13. Q. Where is it? Is it the top bridge?—A. It is the top bridge.

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[5] 17 Q. Now, who was up there with you?—A. On watch—the men I had on watch with me was Blackman and another man called Ferraro, plus——

18. Q. What was that group?—A. Myself and those two men consisted of the signal watch at that time.

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[6] 23. Q. Well, now, who else, giving either the name or the position, was on the flag bridge of the U. S. S. *Fremont* on the morning in question?—A. The Staff Duty Officer.

24. Q. Do you know his name?—A. Lieutenant Nelson; plus the Division Commander.

25. Q. What was his name?—A. Captain Day.

26. Q. Now, what were your duties?—A. I was Signal Superviser of the watch.

27. Q. What did you actually do as Signal Supervisor of the watch?—A. It consisted of actual operating and visual communications and keeping logs, and so forth; maintaining proper watch.

28. Q. Now, were there searchlights or similar devices for making signals by blinker on the flag bridge of the U. S. S. *Fremont?*—A. That is correct.

[7] 29. Q. Would you describe these?—A. On that particular part of the bridge we have 12-inch search-

lights; and then there is six 12-inch searchlights located on that level.

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[8] 31. Q. Now, Mr. Jore, did you use one or more of these searchlights in an attempt to communicate with a merchant vessel which was later involved in a collision?—A. Yes, I did.

32. Q. Will you tell us when you first used a searchlight of this type in an attempt to communicate with the merchant vessel, being as precise as possible in just what you yourself did, where you pointed the searchlight, and the actual physical manipulations that you went through?—A. After this unidentified ship crossed our bow, going from port to starboard, I was ordered by the Staff Duty Officer on watch to challenge that ship, which, in turn, I did.

33. Q. How far off was that ship when you were ordered to challenge her?—A. I would give an approximate distance—approximately 2,000 to 3,000 yards.

34. Q. Had you attempted to communicate with this vessel at any period before the time that you were told by the Staff Duty Officer to challenge her?—A. No, I didn't.

35. Q. Had you seen the vessel yourself at any time before the Staff Duty Officer told you to challenge her?—[9] A. I had noticed an unidentified vessel which was located off our port bow earlier.

36. Q. What were you doing then?—A. Well, I couldn't give you a definite answer on anything like that, other than just observing what was going on, which was part of my duties—to keep an eye on formation.

37. Q. You recognized this vessel as being a stranger vessel to your formation before you were

directed to challenge the vessel by the officer in charge of the watch—is that correct?—A. That is correct.

38. Q. Were you authorized under your orders to challenge a merchant vessel without getting instructions from the officer in charge of the watch?—A. I had to receive my instructions from the Staff Duty Officer on watch.

39. Q. Now, what searchlight did you use to challenge the merchant vessel?—A. I used the forward 12-inch search light on the starboard side on the 0–5 level.

40. Q. On the 0–5 level, which is the flag bridge?—A. That is correct.

41. Q. Will you describe the searchlight as it was at the time you used it, giving all the information that you can think of, with respect to the kind of filter and the way in [10] which you aimed it and anything else which would help us to understand what you were doing?—A. A 12-inch searchlight consists of a light which has a one thousand-watt bulb in it, and in this case your particular light had what we call a reducer on it down to six inches; and then on the end of that you have an amber filter, which is required by Navy ships at night.

42. Q. Now, this reducer, which reduces the diameter of 12 inches to a diameter of six inches, is that a rim type of reducer which comes in from the circumference of the light?—A. It is a rim type, and then you just have a six-inch tube leading out from the rim, is what you have.

43. Q. Now, the six-inch tube which leads out from the middle of the searchlight, what has that got on it?—A. On the end of it you have another similar adaptor which contains the amber filter.

44. Q. Is there any mechanism which enables you to send signals by Morse Code, or other devices?—

A. Yes, you have what you call a shutter assembly on your light itself.

45. Q. Did you manipulate the shutter yourself?—A. That is correct.

46. Q. Can you aim or direct that searchlight?—A. You have more or less sights on it to be accurate, to guide you in training of your light.

[11] 47. Q. Well, describe these sights.—A. The forward piece consists of a small triangle, and on your other end you have a circle which you line up your light with.

48. Q. Now, did you yourself aim the searchlight on the merchant vessel at the time you were directed to challenge her?—A. I aimed that searchlight where I felt the bridge would be.

49. Q. The bridge on the other vessel?—A. That is correct.

50. Q. How did you locate the bridge on the other vessel?—A. Normally, speaking of most ships, I found it to hold true the bridge is near their running lights.

51. Q. Could you see the running lights of the other vessel?—A. That is correct.

52. Q. Now, had you been using a searchlight of this type earlier in the evening for signalling back and forth between vessels in your group?—A. Yes, I did.

53. Q. Was the light in good order?—A. I would say it was.

54. Q. How far had it appeared to be received by the other vessels which sent back messages to you that night?—A. What do you mean? The approximate distance?

[12] 55. Q. That is right.—A. It had been used within the formation itself, and I would say the farthest-away ship would be approximately 2,000 yards.

56. Q. Do you know what the range of that light is?—A. As far as the range on a particular 12-inch searchlight, you would have to take weather conditions and things like that into consideration. But it is good for four or five miles with that particular attachment. The range could possibly be greater, depending on the weather conditions.

57. Q. What were the weather conditions with respect to the visibility of this searchlight at the time you challenged the merchant vessel?—A. Visibility was normal.

58. Q. Could you see their running lights?—A. Yes.

59. Q. Could you see their running lights shining brightly or was there a haze or a halo around them?—A. No. There wasn't anything like that. It was just normal night conditions.

60. Q. Now, getting back to the aiming of the searchlight at what you believed to be the bridge of the other vessel, tell us what signal you sent to the other vessel.—A. I sent "able-able"—"A–A"—which, in International [13] Code, means to call an unknown station.

61. Q. Who manipulated the shutter to send these "A–A's"?—A. I did.

62. Q. How long did you send the "A–A's" using this first search light, approximately?—A. Approximately five to eight minutes.

63. Q. Does that involve a great many "A–A's"?—A. That would amount to quite a few for the simple reason that if don't take you too long to send "A–A," even sending slow to a merchant ship.

64. Q. Were you sending these "A–A's" slow or fast?—A. I was sending them slow, due to the fact that on an unidentified vessel, if it is a merchant ship, they wouldn't be capable of reading them very fast.

65. Q. How many "A-A's" did you send a minute, using the speed that you were sending at that time to the unidentified merchant vessel?—A. Considering a slow rate of speed, six to eight per minute—possibly more—depending on the speed you were sending.

66. Q. Now, when you were using the first searchlight in sending these "A-A's" did you receive any reply from the merchant vessel?—A. No, I didn't.

67. Q. Did you move from one searchlight to another searchlight?—[14] A. I did.

68. Q. Now, what was the apparent position of the merchant vessel at the time you moved from the first searchlight to the second searchlight?—A. An approximate bearing—relative bearing of 060, just forward of the beam.

* * * * *

69. Q. When you commenced sending with the first searchlight when the merchant vessel passed your bow, and continued sending with the first searchlight until the merchant vessel went where?—A. Just forward of the starboard beam.

70. Q. Just forward of the starboard beam?—A. Yes.

71. Q. Why did you change searchlights?—A. I changed for the reason that the other searchlight was in a better location for training purposes.

72. Q. Where was the other searchlight which you went to?—A. It was located—oh, approximately 15 feet aft of the one that is forward.

73. Q. The second searchlight you used was, then, aft of the first searchlight which you had used in challenging [15] the vessel?—A. That is right.

74. Q. It was also on the starboard side?—A. That is correct.

75. Q. Now, was the second searchlight of the same kind and equipment as the first searchlight?—A. Yes.

76. Q. Did you yourself manipulate the second searchlight as you had the first searchlight?—A. I did.

77. Q. Did you yourself aim the second searchlight as you had aimed the first searchlight?—A. Yes.

78. Q. At what point on the merchant vessel did you aim the second searchlight?—A. The same as the first—on the running lights.

79. Q. What signal, if any, did you send from the second searchlight?—A. The same as before—"able-able."

80. Q. Did you yourself manipulate the shutter?—A. I did.

81. Q. How long did you send "able-able" from the second searchlight?—A. Approximately the same time as before—about five to eight minutes.

[16] 82. Q. Were there any apparent changes in the bearing of the merchant vessel from the time that you commenced sending "able-able" from the second searchlight until the time when you ceased sending "able-able" from the second searchlight?—A. None other than the relative bearing changing.

83. What was the change in the relative bearing?—A. Well, from forward to starboard beam until just after she passed our beam.

84. Q. Just after she passed your beam?—A. Yes.

85. Q. Now, did you receive any reply from the merchant vessel during the period when you were challenging her from the second searchlight?—A. No reply was ever received.

86. Q. Did you receive any acknowledgment of the signal which you sent from either the first or the second searchlight?—A. None whatsoever.

87. Q. What, if anything, caused you to cease challenging the merchant vessel?—A. I was being called by one of the ships in formation and I ceased and answered him.

* * * * *

[17] 91. Q. And you went over and took his blinker and replied to his blinker?—A. That is right.

92. Q. Now, do you remember what side of the flag bridge you were on when you were talking to this other vessel which was in your group?—A. On the starboard side.

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95. Q. Now, were you on the flag bridge of the *Fremont* during the part of the morning when a signal was received from the U. S. S. *Ruchamkin* that she had been in collision with another vessel?

* * * * *

A. I did.

96. Q. Will you describe how you learned that the *Ruchamkin* had been in collision with another vessel?—A. Well, I was in communication with this other ship. My attention was called to flares, and so forth, off our starboard quarter, and I give this other ship I was talking to to wait, in which time I was being called by the *Ruchamkin* by flashing lights.

97. Q. Now, can you estimate the lapse of time between the time when you ceased challenging the merchant vessel and the time when you received notice that the *Ruchamkin* had been in collision?—A. I would say approximately five minutes.

* * * * *

101. Q. How far away did the *Ruchamkin* appear to you to be when you talked to her after the accident?—[19] A. Oh, approximately 2,500 yards.

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[21] Cross examination by Mr. BRUSH:

114. X Q. Now, did the *Fremont* have any other searchlights in that area that you could use if you wanted to signal other ships?—A. Yes.

115. X Q. What other lights did she have?—A. As I said earlier, there are six 12-inch searchlights located on that level.

116. X Q. Those are all 12-inch lights?—A. They are all 12-inch.

117. X Q. Do you have any larger lights?—A. Yes. We have two 24-inch searchlights.

118. X Q. Where are they situated?—A. They are located one on each side of the stack.

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[22] 122. X Q. Could they have been operated readily or without too much difficulty? Were they in service?—A. Yes. They were in service.

123. X Q. And what would you have to do to signal with those lights?—A. They are a carbon arc light and in order to use them you have to get permission from the Engine Room so they can compensate for the load on the generator before you can turn them on.

124. X Q. Does that take any length of time?—A. No. We have a telephone that is on the 0-5 level that is connected with the Engine Room. So it would be only a matter, say, of a couple of minutes.

125. X Q. Just a couple of minutes?—A. Yes.

126. X Q. What would the distance be that those lights could be seen if they were used?—A. Ten to twelve miles—probably even greater, [23] depending on the height.

127. X Q. Are they much more readily seen than the 12-inch light that you used?—A. Yes.

128. X Q. Now, the 12-inch light that you used—what has been spoken of as a 12-inch light—is limited

to a six-inch area, is it not, by this screen that you have described previously?—A. That is correct. It is reduced to a six-inch light.

129. X Q. And I take it that the light is further reduced by the amber colored screen, is it not?

In other words, a white light would be a little brighter than the amber lights? Is that not so? That is my point.—A. That is correct.

130. X Q. This screen that is put over the front of the 12-inch light that you have described, reducing it to six inches, does that permit any light to be seen from the area, let us say between the six and the 12-inch lens?—A. No—none whatsoever.

131. X Q. So that when the 12-inch light is used, actually all you see is a six-inch light through that amber lens—is that not so?—A. That is correct.

132. X Q. Is it possible to remove that hood or screen [24] that reduces it from 12 to 6 inches?—A. It is very easily removed.

133. X Q. What do you do—just pull it off?—A. It is twisted on.

134. X Q. I see. Are you able to focus or turn or trim the 24-inch lights? In other words, are they in a fixed position, or can you swing them around?—A. No. They can be elevated and also rotated 360 degrees.

135. X Q. Can you signal with those lights?—A. Yes.

136. X Q. You do signal with those lights on occasion, don't you?—A. When the occasion arises, when you have a large distance to communicate.

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[25] 140. X Q. When did you first notice the lights of this unidentified merchant vessel?—A. When she was located off our port bow.

141. X Q. Will you estimate, if you can, please, how long that was before you first started, or before you received the order from Captain Day to signal?—A. Approximately 15 minutes.

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[27] 155. X Q. Perhaps I can shorten it up for you. [28] You say there was an interval of some 15 minutes between the time you first sighted this unidentified merchant vessel and the time that you received the order from Captain Day to send her the "able-able" signal.

During that 15-minute period did you see her send any visual signals? Did you see any flashing lights?—A. No; I didn't.

[32] 178. X Q. Do you have any idea where the *Ruchamkin* was at the time you first started this "A–A" signal?—A. Yes.

179. X Q. What is that?—A. Yes.

180. X Q. Where?—A. She was off our starboard quarter.

181. X Q. Could you see her?—A. Yes. I could see her.

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186. X Q. Did you receive any visual signal from the *Ruchamkin* either about that time or before or after you first started to signal this unidentified merchant vessel?—A. On that particular watch that night I had [33] received a dispatch from the *Ruchamkin*.

187. X Q. Do you remember what time that was?—A. No. It was before the accident.

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190. X Q. Did you reply to that signal?

The WITNESS. All I did was receive the message and receipt for it.

Mr. BRUSH. I am sorry.

The WITNESS. What we call a receipt for a message.

191. X Q. Well now, I am not familiar with the Navy routine. When you say "receipt for it," do you mean you sent a visual signal to the *Ruchamkin* acknowledging receipt of that message? Is that it?—A. Yes.

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Re-cross-examination by Mr. BRUSH:

[44] 257. R X Q. There is only one thing more, and that is this: Were you the only signal man standing watch—that is, on the *Fremont*—besides the two subordinates you had? Was there a separate signal watch below on the *Fremont* itself?—A. No. That was the signal watch, consisting of myself and those two other guys. That was the signal watch for the whole ship and the flag.

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[46]

Excerpts from Deposition of Bernard Blackman, Witness for the United States of America, Taken at Washington, D. C., on July 16, 1954

Direct Examination by Mr. MCGOVERN:

1. Q. Would you give the reporter your full name and your home address?—A. Bernard Blackman, Monticello, New York.

2. Q. Are you in the United States Navy?—A. Yes, sir.

3. Q. What is your present rank?—A. Quartermaster third.

4. Q. Were you in the United States Navy in November, of 1952?—A. I was.

5. Q. What was your rank then?—A. I was a seaman at the time—seaman first.

6. Q. How long had you been in the Navy in November of 1952?—A. Possibly a year and a half.

7. Q. Had you been to sea before you went into the Navy?—A. No, sir.

8. Q. Now, were you on a signal watch with Jore?—A. Yes, sir.

[47] 9. Q. Tell us how that watch was set up.—A. Well, we had a three-man watch. There was another guy on watch besides myself by the name of Ferraro, who was also a seaman at the time.

We were both recorders. Jore was the operator.

Our duty was to record all signal messages that came in by flashing light. That was our duties.

10. Q. Were you on watch on the night on which a collision occurred between a privately-owned vessel and another Navy vessel?—A. I was.

11. Q. Now, at what time did you go on watch?—A. I had the mid-watch, from 000 to 04 in the morning.

12. Q. Now, where was the watch being stood—on what bridge?—A. On the flag bridge.

13. Q. On the U. S. S. *Fremont*?—A. On the U. S. S. *Fremont*.

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[48] 21. Q. When did you first commence to talk by blinker with other vessels in the group, with respect to the time you went on watch?

You went on at midnight?—A. At midnight.

Oh, possibly a half an hour after we went on watch.

[49] 31. Q. When did you leave the *Fremont*?—A. I have been on and off the *Fremont*. I was staff [50] at the time, attached to Transport Division 22.

32. Q. Now, let us get that one straightened out.

You were actually attached to the staff of the Commander, and not to the ship—is that correct?—A. Correct.

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37. Q. When was the first that you started to talk by blinker or flashing light with a vessel which was not a naval vessel?—A. On that same watch?

38. Q. Yes.—A. Well, about a half an hour after we have gone on watch we were told by a Staff Duty Officer to challenge a ship [51] off our port beam, and Jore, who was Quartermaster second at the time, challenged them, and it was a mine sweeper. It was a naval vessel.

39. Q. It was a naval vessel?—A. Yes.

40. Q. And how did he challenge the vessel which turned out to be a mine sweeper?—A. International Code "A-A."

41. Q. What did he use to challenge the vessel which turned out to be a mine sweeper?—A. Twelve-inch flasher.

42. Q. What reply did he get from the vessel that turned out to be a mine sweeper?—A. They identified themselves. They called, and we looked it up in our international books and it turned out to be a mine sweeper.

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46. Q. What was the next vessel which you challenged that watch?—A. The *Washington*.

[52] 47. Q. You learned later?—A. That she was the *Washington*.

48. Q. You learned later?—A. We learned later.

49. Q. At the time did you know what the name of the vessel was that you challenged?—A. No.

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[53] 57. Q. Now, what were you actually doing at the time your vessel first challenged the vessel which turned out to be the *Washington*?—A. I was behind Jore.

58. Q. About how far behind?—A. About two feet.

59. Q. What was Jore doing?—A. He was challenging the ship.

60. Q. How was he doing that?—A. By flashing light.

61. Q. What light was he using?—A. Twelve-inch flasher.

62. Q. Was this the same type of light which had been [54] used previously in challenging the other vessels?—A. Yes, sir.

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[55] 74. Q. How was the visibility on that night? Was it good or poor?—A. I would say it was very good.

75. Q. Was it part of your duties to record any reply made by the challenged vessel?—A. It was.

76. Q. Did you record any reply made by the vessel?—A. No, sir.

77. Q. Did the challenged vessel make any reply which you saw?—A. No, sir.

78. Q. Were you looking for it?—[56] A. Yes, sir.

79. Q. About how long were you looking, awaiting a reply from the challenged vessel?—A. All the time we challenged.

80. Q. Which was how long, approximately?—A. Fifteen or twenty minutes.

81. Q. After you had ended challenging the other vessel did you and Jore talk to another naval vessel by blinker?—A. Yes, sir.

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85. Q. Did you become aware of the fact that subsequently a collision had occurred between a naval vessel and a merchant vessel?—A. Yes, sir.

86. Q. How did you first become aware of that?—A. I heard it come in by voice radio.

87. Q. Voice radio?—A. Yes.

[57] 88. Q. Where were you standing at the time?—A. Receiving messages from another ship at the time.

89. Q. Receiving messages from another Navy ship?—A. Yes.

90. Q. Which you had commenced to talk to after you had ceased challenging the unidentified ship?—A. Yes, sir.

91. Q. About how long was it from the time you ceased challenging the other vessel to the time that you heard of the collision by voice radio?—A. Ten minutes.

92. Q. Was there an appreciable amount of blinkers between the naval vessel and your vessel?—A. Yes, sir.

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[58] 98. Q. When you were challenging the other vessel could you see any lights on the other vessel?—A. Yes, sir.

99. Q. What lights could you see?—A. I could make out the running lights.

100. Q. Could you see their masthead light, too?—A. I believe so.

101. Q. Could you see any lights in their crew's quarters?—A. Yes.

102. Q. Porthole lights?—A. Porthole lights.

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[59] Cross-examination by Mr. BRUSH:

111. X Q. You said when you were sending this "A-A" signal you could see some lights on this unidentified merchant vessel?—A. Yes.

112. X Q. What lights could you see?—A. I could make out the running lights.

113. X Q. What do you mean by "running lights"—A. Starboard light.

114. X Q. A green light?—A. Yes.

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Excerpts from Depositions of Daniel J. Horgan, Witness for the United States of America, Taken at Albany, New York, August 23, 1955

[3] Direct examination by Mr. MCGOVERN:

Q. What is your name and home address?—A. My name is Daniel James Horgan, H-o-r-g-a-n. My home address is 34 Pinewoods Avenue, Troy, New York.

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[4] Q. Now, were you the Officer of the Deck on the [5] U. S. S. *Ruchambin* on the night when she had a collision with the tanker?—A. I was the Officer of the Deck at that time; yes, sir.

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[6] Q. Now, when did you come on watch on the evening of the day when you had the collision with the tanker?—A. I came on watch at 11:45 p. m. My watch was to extend until 3:45 a. m. the following morning.

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[11] Q. What was the first notice that you had of the presence of a stranger vessel?—A. The first notice that I had of a strange vessel, and to my knowl-

edge the first notice that anyone aboard ship had of a strange vessel, was approximately, oh, 14 minutes after two, when it appeared that the *Capricornus* was closing us. She was a ship that we were passing abeam, directly abeam, at that particular time, and she appeared to be closing us, and I did not think at that particular time that it was a strange vessel. I thought it was the *Capricornus*. I interpreted it as being that. When I looked over again, after a course change of approximately ten degrees, which the Captain gave to me, the ship continued to close us, and command was given by the Captain, which I repeated—probably gave it at the same time as he—full right rudder. And that was the first indication that I had that there was a stranger in our midst.

Q. Was the *Capricornus* showing lights?—[12] A. The *Capricornus* was showing lights; yes, sir.

Q. Were the other vessels in the group showing lights?—A. All vessels in the group were showing lights; yes, sir.

Q. Was the stranger vessel showing lights when you saw it?—A. Yes, sir.

Q. Were you showing lights?—A. Yes, sir.

Q. Did you have look-outs?—A. Yes, sir.

Q. Where were the look-outs posted?—A. One look-out was posted on the left wing of the bridge, another look-out on the right wing of the bridge, and a third look-out on the fan tail of the ship.

Q. With respect to the sighting of the vessel which you at first believed was the *Capricornus* coming close to you, and which later turned out to be a tanker when was the last previous examination that you had made of your radar scope? Have I made that clear?—A. Yes, sir. Between the times of 2 o'clock and 2:15, I believed I looked at the radar scope twice. The radar scope was on the 20 mile scale. I was look-

ing at the formation as a group and at the screening vessels in [13] which I was particularly interested, during the times of 2 o'clock to 2:15.

Q. How far ahead were the screening vessels at that time?—A. About 3 to 5 miles.

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Q. Now, in the course of the Navy examination, which Mr. Brush and Mr. Crenshaw have, which you saw today, you were interrogated at length as to whether you had heard on the tactical circuit an order from the Commander of the Screen, Captain Persons, to the extreme left hand screening vessels, the *Lloyd* and *Corry*, to maneuver as necessary to avoid a stranger vessel, or merchant vessel? The precise word I'm not exact on. Do you remember that interrogation?—A. Yes, sir.

Q. Now, what do you have to say today with respect [14] to that point?—A. I can remember having heard no message of that particular nature over any tactical circuit.

Q. Now, on your look-outs: did anyone check the look-outs to see whether they were working?—A. Yes, sir. The Captain was standing within 5 feet of the look-out on the port side, and I was standing within 5 feet of the look-out on the right hand side or starboard side.

Q. Were they looking, or did they appear to you to be looking?—A. Yes, sir.

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Cross examination by Mr. Brush:

[28] Q. Now, I suppose since this collision occurred, you have given some thought as to why you did not see the blip of the *Washington* on your radar scope. Have you reached any conclusion?—A. Yes, sir.

Q. What?—A. I have had a similar experience. We were in convoy coming up from Panama, and our Commodore, a different one, was directing the screen. I was aboard a different vessel at the time. And there seemed to be danger of a collision between two vessels. The blips were closing, and one could see them closing together, and they merged and became one blip, and it's practically impossible to distinguish between one ship and two ships when they're that close together.

[29] Q. And I suppose you've given some thought, also, to the fact that you didn't see the lights of the *Ruchamkin*, as she was closing ahead. I mean, the *Washington*. Have you given some thought as to why?—A. Yes, sir.

Q. Why?—A. I think she was hidden by the *Capricornus*. We were coming up astern of the *Capricornus*. She was directly in line with the *Washington*, as I visualized.

Q. Yes? A. And she became merged visually, as well as by radar, with the *Capricornus* on that occasion. That's why we didn't see her visually.

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[37] Q. You said that the *Capricornus*, according to your observation, was exhibiting lights. What lights could you see on the *Capricornus*?—[38] A. The starboard running light, which is the right-hand running light, and the cargo lights, port hole lights.

Q. When you say cargo lights, what do you mean?—A. Well, the port hole lights. Let's put it that way.

Q. I see.—A. And her running light, and as we came abeam of her, her masthead light.

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Excerpts From Deposition of Harry T. Morehead, a Witness for the Government, Taken at Chicago, Illinois, September 7, 1955

Direct examination by Mr. McGOVERN:

[3] Q. Were you in the United States Navy during the year 1952?—A. Yes.

Q. Were you attached to a ship called the *Fremont*?—A. Yes.

Q. Were you attached to the *Fremont* during the night when a collision occurred between the *Ruchamkin* and the tanker *Washington*?—A. Yes, I was.

Q. When did you go on watch and where that night?—A. It was 11:45 in the CIC on the night of the accident.

Q. Is the CIC the Combat Intelligence Center?—[4] A. Comat Information Center.

Q. Where was that located on the *Fremont*?—A. It was amidships approximately. It was on the 0–3.

Q. That is the third deck?—A. The third deck from the main deck.

Q. Three decks down from the main deck?—A. Three decks up from the main deck.

Q. Was this area completely enclosed by bulkheads?—A. Completely.

Q. What did you find when you got to the CIC of the *Fremont* on the evening that you relieved at about quarter of twelve?—A. Well, when I came to relieve the watch at quarter of twelve there was a message coming over the primary CI net from the *Ruchamkin* and the officer who I was relieving was Mr. McLain. He was completely preoccupied with taking the message, and I believe the message lasted until about ten after one, which would have been about 25 minutes after I came to relieve the watch.

During this time the functions of our CIC were practically ceased because our primary means of communication were tied up by the *Ruchamkin*. Finally I believe [5] they stopped for some reason and I believe Mr. McLain was able to get on the net and tell them to send it over another circuit. Within ten minutes I was able to relieve him, and he left. That was about the situation when I took over.

Q. What was the situation with respect to skunks or raids?—A. Well, as I recall it was the worst night I ever have seen. There were approximately 35 or 40 contacts within the twenty miles of the center of our formation.

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Q. Did you at some time during the evening come in acquaintance with a ship which was called Raid Fox?—A. Yes.

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[6] Q. Now, where was *Raid Fox* when you first designated her?—A. It was off our port bow, I believe, about thirteen miles or so.

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Q. What was the relationship between the CIC of the *Fremont* and the flag?—A. We acted as the CIC for the flag as they didn't have one of their own aboard.

Q. Did you assign *Raid Fox* to any other vessel?—A. Yes, we first assigned it to the *San Marcos*, but the *San Marcos* was not able to distinguish which contact *Raid Fox* was; so they came back and said that they did not hold that contact. So then we reported——

Q. What does "we reported" mean?—A. Well, we send out the designated range and bearing, and the time that we were given the report, which would be

pretty well simultaneous to actually where the ship was at the time we were sending out the report. Then after we developed a solution for the [7] contact, what course and speed it was on, then we reported again on the CI net to the other ships, giving them the course and speed and CPA of the contact.

* * * * *

Q. How long did you continue to track and report *Raid Fox*?—A. I believe it was twelve minutes or so.

Q. For twelve minutes?—A. Right, until we lost the raid in the sea return.

Q. Suppose you concentrate on those twelve minutes and tell us what appeared to you to be the approach of *Raid Fox* during this particular period of time?—A. Well, we of course had the contact on our [8] scope before it was designated when the course was 270, but at that time it presented no threat to the formation. We didn't designate the contact. When we changed course to 257, we could see on our VK-2 repeater that this particular ship was on a collision course with us; so we immediately designated it as *Raid Fox*. We gave it a designation and asked the *San Marcos* to repeat it. As I said, when they didn't hold it we sent it out over the net that we would report it. When we did develop the solution, it was on a collision course with the formation and we so sent out that report.

We subsequently sent ou another amplifying report stating it was still on collision with the formation. I believe it was the ship in front of us, I believe the *Capricornus*. I am not sure which ship it was. Finally when the contact entered the sea return, approximately where the screen was, then we lost track of it and ceased to plot it.

* * * * *

Q. Tell us what the sea return is.—[9] A. The sea return is the interference on your radar scope, and it is usually a circular area right around the center. In this interference you cannot pick up contacts without turning down the gain on your master; on your master control.

Q. Did you try that?—A. We couldn't turn down the gain because there were too many contacts out in front of us, and by turning down the gain those contacts would have dropped off the scope completely and we would just be able to pick up ships within very short range of us.

Q. About at what time was it you lost *Raid Fox* in the sea return?—A. I believe it was 0202.

Q. Is that the time that is given in the report of collision?—A. Yes.

Q. Would you look at this report of the collision?—A. Yes.

Q. Tell me when that was made up.—A. To my best recollection this report was requested by our operations officer, Mr. Defay, or Mr. Woodman who was the ship's CIC officer. Mr. Woodman had retired, I guess, about eight o'clock and was in bed at [10] the time, but he came up to CIC and I told him what had happened.

Q. When did he come to CIC with respect to the collision?—A. Oh, I would estimate half an hour, fifteen minutes, or something like that.

* * * * *

Q. In that handwritten note it says, "0150 solution was begun and contact was plotted every minute until it was obtained." What does that mean?—A. Well, it takes several minutes before you can obtain a solution on a particular ship. You have to have at least three minutes of plot before you can determine another ship's course and speed.

[11] Q. Then the next sentence says, "Contact of bearing was 229 degrees true, range 6.7 when solution was sent to flag bridge and over the CI net." What does that sentence mean?—A. Well, after we obtained the solution the contact was 6.7 miles away when the flag was notified that the contact was on a collision course. The captain of the ship was notified and the other ships in the formation were notified over the primary CI net.

Q. The flag refers to Captain Day?—A. Yes, OTC.

Q. The bridge would refer to the bridge of your vessel, the *Fremont*?—A. Right.

Q. What was the CI net?—A. That is the primary net used between all CIC's of the formation. All radar information is transacted over the CI net.

Q. Is that the same net that was occupied in transmission from the *Ruchamkin* when you first came on watch?—A. Right.

Q. The next sentence says, "Solution was originally collision with *Capricornus* at time 0209 with [12] contact on course 015 degrees true, speed 12 knots." What does that mean?—A. Well, after we plotted the contact, that was our solution, that *Contact Fox* was on a course of 015 with a speed of 12 knots, and that if their course remained the same, and ours remained the same, and the speeds remained the same, they would collide with the *Capricornus* at 0209.

Q. That solution was actually a prediction then?—A. Right.

Q. The next sentence says, "Solution when checked was again sent over CI net and to the flag." What did you mean when you said "solution when checked"?—A. Well, we keep taking a one-minute plot on the contact while we are plotting it continually so that as the contact proceeds it may possibly slow down or reduce speed. So we recheck our solution with the later findings to see if it was still true, and I

believe in this case it was still the same course and speed.

Q. The next sentence says, "At this time contact *F* was bearing 230 degrees true, 3.9 miles range, and solution was given that contact *F* would pass through the screen and clear of the formation with CPA 312 degrees true, 1,700 yards from the *Fremont.*" Would you [13] take us through that one and break it down so that a layman could understand that?—A. Well, our last plot, the last time we could see the contact on our scope, was when it was at 3.9 miles, I believe, and at that time it looked like it was going to go right through the middle of the screen and pass clear of the formation and that its bearing, the closest point to which it would come to the *Fremont,* which was the center of the formation, would be 1,700 yards, and at that closest point of approach to the *Fremont* it would bear in 312.

* * * * *

Q. That gets me to the last sentence, which says, "When last plotted (contact was indistinguishable from the screen and formation after this) contact *F* was beginning [14] to pass through the screen between where we believed the *Lloyd* and the *Ruchamkin* were." What does that sentence refer to?

* * * * *

A. Well, as I said before, the last time we saw it, it was just entering the sea return.

Q. Which was at the same place, where the screen was?—A. The screen was just inside. We couldn't see the screen, either, but we assume the screen was where we had it plotted on the plotting board.

* * * * *

Q. * * * Did you have the *Ruchamkin* on your plot?—A. No.

[15] Q. Did you ever know where the *Ruchamkin* was at your particular watch before the accident?—A. I never had any idea where it was.

* * * * *

[17] Q. Were you aware that the tanker made a change of course to her own starboard or right hand, and then after steadying on that course for a while swung back to her port and her original course?—[18] A. From the time we originally started to plot the contact until the time that we ceased plotting it, we were unaware that it had made any course change at all.

Q. Until 0202 you could see no apparent change of course?—A. No.

* * * * *

[19] Cross-examination by Mr. CRENSHAW:

* * * * *

Q. Could you give me a succinct statement of what your job was, what the CIC job was?—A. Well, we were operating under the command of the flag, Captain Day; and it was the CIC function to track and report and obtain solutions for all contacts that would appear to be threatening the formation. We reported them and their solutions with possible recommendation [20] for changes in course and speed to Captain Day, and he acted upon them as he saw fit.

* * * * *

Q. Do you recall what the message pertained to [21] that the *Ruchamkin* was sending when you came into the CIC?—A. I got there, I suppose, after they had been transmitting five or ten minutes, and I believe it pertained to some beach reconnaissance work they had done off the Virginia Beach.

Q. Do you know whether or not it was an arrival report?—A. No, it was not an arrival report. It was

a report concerning beach conditions, I believe, the surf, obstacles or whatever else they had been investigating on the beach.

* * * * *

[22] Q. There was nothing in this message to indicate when they were to rejoin your formation?—A. No.

* * * * *

[30] Q. You say that you were operating as the flag CIC. How did you know that?—[31] A. Well, the CIC doctrine as it was written, when the flag was aboard we were under the tactical command of the flag.

Q. Where was the CIC doctrine written?—A. For the *Fremont* or the general CIC doctrine for the Navy?

Q. I would like to know both.—A. The CIC doctrine for the ship was written aboard the ship, and I believe it was written or advised, anyway, by Lieutenant J. J. McLain with the assistance of the operations officer, the captain, the flag, and a few other people.

Q. Was it in sort of mimeographed or letter form?—A. Mimeographed.

* * * * *

[35] Q. What I would like to know is the range at which the Washington was when you changed course from 270 to 257 and she then became a collision prospect?—A. Somewhere approximately around ten miles, I would say off hand. I don't seem to find it in here in what I said previously.

Q. You said she became a collision prospect then whereas she had not been before?—A. Right.

Q. What do you mean exactly by that, sir?—A. When we were on course, 270, the *Washington* or

Contact Fox would pass to the rear of the formation. When we changed to course 257, by so doing the *Washington* was on a collision course with us.

Q. As to the formation, the risk of collision existed between the formation and the *Washington* when you changed to course 257?—[36] A. That is right. There was no risk of collision previous to that had we both maintained our courses and speeds.

Q. Did that information go to Captain Day?—A. After they changed course to 257?

Q. Yes.—A. Yes.

Q. That risk of collision did exist?—A. Right.

Q. At that time do you know where the *Ruchamkin* was?—A. No, I didn't.

* * * * *

[37] Q. You stated there were 35 or 40 contacts on your twenty-mile range. Did any of those come inside the screen in the manner that the *Washington* came?—A. No.

* * * * *

[38] Q. Was the reason that you kept *Raid Fox* after the *San Marcos* said they didn't hold it because you felt you had the primary responsibility of the keeping track of that contact?—A. That is correct. Regardless of what contact we might have farmed out to other ships to track and report for us we were responsible for the correct solution and we plotted every contact and kept track of every contact that might have been coming close to us. When the other ship would report their solution we would check it with ours. If there was a discrepancy we would recheck ours, but we would in all cases take our solution.

Q. That stems from the doctrine of command that the OTC is responsible for the safety of all the ves-

sels, is that not correct?—A. That is probably where it stems from, yes, sir.

* * * * *

[40] Q. Do you recall encountering similar situations, where merchant or other identical vessels approached a formation?—A. We had many contacts that had been on collision course, and we had successfully avoided them all.

[41] Q. How did you avoid them?—A. Well, when we didn't have the right of way we sent recommendations to the flag to change course and speed to avoid the contact. When we did have the right of way, as in this case, we just sent the solution and it was up to the flag to decide what they were going to do about it.

Q. Did you send to the flag your conclusion that you had the right of way?—A. No, that would have been obvious. I believe they held the contact visually.

* * * * *

[43] Q. You say you did consider a stranger within this formation a danger?—A. Yes.

Q. Did you make any recommendation to the flag concerning the obvious entry at 0202 of this stranger within the formation?—A. We contacted the flag and told them that the contact was entering the screen and into our sea return and that we could no longer distinguish between it and the sea return and the screen.

Q. Did they acknowledge that message?—A. Whoever was on the squawkbox said something meaning they acknowledged it.

Q. You mean the squawkbox is the means of direct communication with the flag?—A. That is right.

Q. And that would be a representative of the flag that would answer that box and receive your message?—A. Yes.

[44] Q. And you feel virtually sure that message was received by some representative of the flag?—A. Yes.

* * * * *

[45] A. You see, when a contact such as that get into the screen and that close to us, it would have very little value even if we did turn down the gain for us to continue tracking it. The situation would develop so extremely rapidly. Here you have fourteen ships with this one ship coming the other way. They are all jockeying to get out of the way. Radar just won't pick up that information that fast and then evaluate it, and get it up to the flag for them to use it for any practical purpose.

Q. In other words, in order for anything really effective to be done with respect to the incoming stranger it would have been to be done considerably earlier than 0202?—[46] A. Definitely, and it would had to have been done on our part as far as the radar was concerned about that time or previous to that.

* * * * *

[48] Q. * * * Let me ask you this. Did the *Washington's* bearing from the *Fremont* change appreciably from the time that you had a 9.7 mile range until the commencement of that plot?—A. No, the bearing was steady all along after we were on 257. You see, the bearing would have changed as we have changed course from 270 to 257. After we were on 257 the bearing remained constant.

* * * * *

[50] Q. In addition to their being able to do that, you had already, as I understand it, told them that the *Washington* was on collision course with the formation, is that correct?—A. Yes.

Q. That information, so far as your CIC is concerned, never changed with respect to the flag, did it?—A. No, all the information we sent to the flag was that the *Contact F* was on collision course.

Q. And it is your further conclusion by the time 0202 it was too late to prevent the *Washington* from coming into the formation?—A. As far as we were concerned on CIC, very definitely.

* * * * *

Q. One other thing with respect to the solution that there was a collision course with the formation, that applied to everybody in general, is that right?—A. That is right.

Q. With respect to the solution that there would be a collision with the *Capricornus* at nine minutes [51] after two, was that message sent directly to the *Capricornus,* or what did you do with respect to tapping the *Capricornus* on the shoulder and saying, "Look here"?—A. It was our general policy if we got a corrected solution and if there was a slight correction to send it out on the CI net to all the ships in the formation and usually we asked one of them to acknowledge it just to make sure we were still getting through to everybody. Who we asked to acknowledge that particular message, I don't know. That request for acknowledgment wouldn't necessarily have gone to the *Capricornus* although it was usually our policy or my particular policy if it was going to be a collision with a certain ship to ask that particular ship to acknowledge. However, I might not have done it that particular night.

Q. Did you feel there was a duty to warn the other vessels of the formation of the nearness of danger to home?—A. Definitely.

Q. Do you remember any transmission going out of your CIC to the effect that the solution was changed from a collision with the *Capricornus* to a collision with the *Ruchamkin*?—A. No, there was nothing sent out concerning the [52] *Ruchamkin* as we did not know where the *Ruchamkin* was.

Q. You are sure of that?—A. Absolutely.

Q. You controlled personally the net that such a message would go over?—A. Yes.

* * * * *

Redirect examination by Mr. McGOVERN:

* * * * *

Q. * * * You explained in your testimony on direct and cross about sea return, but you haven't explained [53] double echoes.—A. Double echoes are caused by a reflection from a large ship which is close to you. You get its reflection on the radar scope and double its distance from you you occasionally will pick up another blip on the radarscope which will look like a ship, but it will just be an echo of the ship, of the one ship that is there close to you. It usually happens just when the ship is close as in a tight formation, such as we were in.

Q. Were you having double echoes on that night?—A. Yes, we were. You can only assume that they were. We could see them occasionally just on the fringe of the sea return and they would not have to be the formation necessarily.

Q. A double each then is the echo from the vessel which is there and another echo from a vessel which is not there, but which appears to be there?—A. Right.

* * * * *

COURT'S RULING ON DISCOVERY OF STATEMENTS

Excerpts From Pre-Trail Hearing Held September 12 and 13, 1955, Before Hon. Albert V. Byran, U. S. D. J.

* * * * *

[43] The COURT. * * * Now do you have some other disagreements?

[44] Mr. CRENSHAW. I think so, sir.

If Your Honor please, we have in addition to the pretrial order which has been disposed of, we have a motion by the Texas Company for the production of transcript of testimony and the exhibits attached thereto which were taken before the Navy Court of Inquiry which was convened in this case shortly after the collision.

* * * * *

I might say at the outset there are three things that I see that are left unresolved right this minute. There is our motion for the Navy Court transcript. There is the Government's motion for discovery of certain statements and records of the Texas Company, and there are exceptions which the Texas Company have filed to the affidavit of Mr. McGovern which was filed in support of his discovery motion.

* * * * *

[45] Now the Government's position with respect to the Navy Court of Inquiry, as I understand it, is that they are claiming a qualified privilege. Now if you recall, or I should say I recall, that at the pretrial we discussed this motion and we pointed out to the Court that there was in this case no element of secrecy or military secrets as contemplated in the Reynolds case, 345 U. S. 1, with which the Court is familiar. At the end of that conference the Government was to

give us a list of the persons who testified before that Court of Inquiry, and we were to designate to the Government which of those witnesses we felt we should—whose testimony we felt we should have.

The Government did submit that list to us, and in response thereto we filed a motion for the production of all of those witnesses. We felt that it was not possible to limit the request to certain of the witnesses.

* * * * *

[51] Now the affidavit that we submitted summarizes this attempt by saying, "By virtue of the foregoing it appears that now some two and a half years after the collision and after a most diligent and it is submitted logical attempt by means of established pretrial procedure to elicit the facts of this collision, your respondent, the Texas Company, is confronted with the tender of live witnesses whose memories are vague, and incomplete set of logbooks and other contemporaneous records, and as to that the missing items of which appeared to have been destroyed subsequent to the filing of the libel and the interrogatories."

* * * * *

[52] We think, therefore, that we have pressed every way that we know how to get at the facts of this collision without going after the Navy records. That is why we have done it so late. We have not, however, been able to get the information that we wanted.

Now the Navy, when they were examining the witnesses, they knew what questions they asked; they knew what the people were doing and what they were supposed to be doing. This was a board of experts examining the witnesses in the field as to which they were expert.

Now our attempt at the Coast Guard, even if we had all the witnesses there, would not have been anywhere near so successful in bringing out the full facts as these naval officers, simply because they knew what to ask.

Now that, I think, establishes good cause for the production of this document.

* * * * *

[55] But this situation where the United States hides behind this cloak of a conditional privilege and these cases say no more than that, you have to show good cause, it just [56] seems to me abundantly inequitable to deny to the Texas Company these transcripts when they are willing to give them to us if we simply do this useless thing of examining the witnesses. We are entitled to them, I submit, now, prior to the trial, so we can intelligently analyze them and develop the case as we think it should be developed.

* * * * *

Mr. McGovern. * * * [59] Now for reasons which for one hundred and fifty years seem sufficient to the people running the Navy, the Navy has been of the belief that comments of this sort should not be made with an eye to their use in litigation. They should not be made with a lawyer around or with a lawyer assisting the man or with the man thinking of a lawsuit, and for that reason the Court of Appeals for this Circuit, District Court up in Boston, District Court over in Maryland, every place except in the Southern District of New York, the Courts have held that the investigation in fact is a privileged investigation. It is not, however, absolutely privileged, if someone is killed inside of a naval reservation, and the only testimony which is available is the testimony of the people on the reservation who are taking one of these Boards to find out who "done it" and why.

Obviously that is not going to remain outside of the view of a Court unless there are alternatives put forward.

Now the simplest alternative is the one we gave to Mr. Crenshaw and the first is asking the same people that we asked. Now in the case of the last witness we took Mr. Hirshman—he testified in addition to his testimony before the Navy Board of Investigation which Mr. Brush thought was quite good for his side of the case. Now when you have a [60] fact situation involving a great many people, it is always possible their witness will think of something after he testifies one place and testified again. However, since every time we call such a witness we want to be sure that he is now in the position of having told a different story to this Court than he did anywhere else under oath, we are always careful, the Navy has always been careful to make sure that a witness who testified reads his previous testimony.

Now I don't see that testimony—it is not furnished to the Department of Justice because it is not for use in litigation. It is mainly for people within the naval service who are supposed to be told that it is conducted without an eye to any use in litigation.

Now when Mr. Brush or Mr. Crenshaw demand that we produce a particular witness, I in turn tell the Navy that they should declassify his testimony. They go through and have someone in the Security Division blot out all of the parts of his testimony which involve any material of a national defense character, and then they give me a copy. When I get that copy I give it to opposing proctor, who has it approximately within twenty-four hours of the time that I get it and then we, when I go to see the witness, the witness looks it over and reads it first, and then

we examine the witness, and in the examination I am always careful to make certain that the record shows that he has refreshed his [61] recollection by reading his privileged testimony. Now the reason we do that is quite simple, that the Court of Appeals for the Fourth Circuit, in the Oregon-New Mexico case said that was the right thing to do, and we are trying to do in our own simple, bumbling Government way the right thing. Now you can't do it one way for Mr. Crenshaw, another for Mr. Brush and on the other hand so to Mr. Gazan. * * *

* * * * * *

Now, it is with that background that I want to impress upon the Court that this is a matter on which [62] we regard the authorities as being dispositive of the issue and if we are wrong, then we are entitled to have a Court opinion specifying where we have been wrong because next time we want to be right. It is more important to the Navy to conduct itself so that its procedures are in accordance with what Courts and Courts of Appeal say than it is with winning a particular lawsuit.

Now the procedure which we have been following so far is the procedure which we were told by the Court of Appeals in the Fourth Circuit was the right procedure.

* * * * *

[65] Now in all these cases we maintain first that good cause has not been shown; second, we have cooperated in every way possible; third, if there are some other ways we should cooperate short of making the whole thing available, it is for a Court to tell us this because we have so far complied [66] with what the Courts have told us indeed.

The COURT. How do you claim the privilege? Do you claim it in the affidavit or——

Mr. MCGOVERN. No, Your Honor; we claim the same way an attorney does in the Hickman-Taylor sense.

The COURT. How do you plead it here?

Mr. MCGOVERN. We maintain it is privileged as a matter of law.

* * * * *

[69] Mr. MCGOVERN. Under the discovery rule he has to also show that it is good cause for nonprivilege material, and he hasn't attempted to prove that.

The COURT. We have argued that, and we have also argued the question of privilege.

Mr. MCGOVERN. That is right.

The COURT. Because we have argued Reynolds and what should be done in cases of a claim of privilege. Now if there is no claim of privilege here, then the sole question before the Court is the sufficiency of the cause shown.

Mr. MCGOVERN. And whether the documents sought are nonprivileged in nature.

The COURT. Well, I do not know that that would be in issue because there has been no claim of privilege.

Mr. MCGOVERN. Once again, Your Honor, the cases say that the reason this is privilege—now the cases also before Hickman-Taylor considered an attorney's work product as privilege. Now it is quite true that the cases get [70] confusing after *Hickman* v. *Taylor,* but we are not in any way trying to keep the thing out in the open. What we are trying to say is that in order to obtain these documents, the plaintiffs, the Texas Company must move with an affidavit showing good cause for the disclosure of documents which are not privileged.

Now in order to do so they have to show both good cause on which we think we have them beat and, secondly, that the documents are not privileged. Now when the cases come up for decision, the Court will find that in the case of an attorney's investigation or Navy investigation requires a lot more good cause or what the Court seems to call exceptional good cause, before the Court will grant the motion. If the Court denies Mr. Crenshaw's motion and then denies my motion which is for his investigation, the case will go to trial and we will have the facts before the Court in the regular way, which is the way they were before all of the Hickman and Taylor cases started coming down.

If, on the other hand——

The COURT. I understand that. Let me cut through this.

How many witnesses are there? Can you say that? Whose testimony was taken at the Court of Inquiry?

Commander BLOCHER. If the Court please, I would like to interject just a single thought insofar as the Navy is concerned. It seems, perhaps, to me that there are three types of privileges being talked about. I had reference to the question of privilege as being military classification of the Navy Court of Inquiry. I state at this time that except for those witnesses to whom the declassified testimony has been shown, the rest of the Navy Court of Inquiry remains classified, confidential.

The COURT. There are forty witnesses; is that right?

Mr. CRENSHAW. That is correct, from Mr. McGovern's letter.

The COURT. I understand from you, Mr. McGovern, that you are willing to produce all forty of those witnesses?

Mr. McGovern. We promised to produce the fifteen of them that Mr. Crenshaw asked.

The Court. He has not asked for all of them?

Mr. McGovern. No, we promised as to all that he has asked for, to produce—they are declassified—I am sorry—I didn't make that clear. Their declassified statements.

The Court. Now why would not that meet your requirements?

Mr. Crenshaw. For this reason, if Your Honor please, we haven't asked for the witnesses because we think it is much simpler to ask for the testimony before the Court [72] of Inquiry. The point that I was trying to make earlier was that the Government has put only this one condition upon the granting of our request; ask for the witness and he shall be given the testimony. Well, now these people, we don't feel that unless we are driven to it, that we should have to make the United States bring in forty witnesses simply so we can get their testimony.

* * * * *

[74] The Court. Now let me ask Mr. McGovern—you concede that you will provide him the production of any and all of these witnesses, will you not?

Mr. McGovern. The declassified testimony of any of these witnesses.

The Court. It becomes declassified as he talks to them?

Mr. McGovern. No, the witness will never testify as broadly with respect to the military features of the case as he did before the Navy Board of Investigation.

The Court. For instance, let us take an extreme [75] case. If you ask for all forty, your position is that you will produce all forty?

Mr. Hayes. If it is possible, we will certainly get them here.

The COURT. Yes, and when you produce all forty, you show each witness his statement beforehand?

Mr. MCGOVERN. That is right.

The COURT. Why would not that be, and this is a matter solely for your determination, why would not that be far more inconvenient and far more cumbersome and far more burdensome to the United States than producing the statements of the witness in advance?

Mr. MCGOVERN. Your Honor, the same question was asked in the Supreme Court, and the F. B. I. statement cases. The United States in its due process within the Government does not consider the difficulty which the procedure imposes upon trial counsel. I would like myself, now that he has excited my interest, if he has seen something in this Court of Inquiry which he is going to wave in one of my witness' face, I would like to know about it, too, but I also serve, and the Navy is in charge of deciding what material is classified for the national defense, and I am trying to get a modus vivendi system devised.

Now the only system which we have which appears to give equal room for Mr. Crenshaw to take one of these forty [76] witnesses and prove the Command was personally charged with all sorts of duty he didn't comply with is the one that we have worked out for us in the Oregon-New Mexico. If you want to have an alternative system, we will have one alternative system for Mr. Crenshaw and we will try another case in Norfolk——

The COURT. No, no, was not talking—was not your system in the Oregon case to produce the witnesses?

Mr. MCGOVERN. That is right.

The COURT. Any of the witnesses that they asked for who testified in the inquiry?

Mr. McGovern. There was a little disagreement in the Court of Appeals about whether they had designated a particular witness, and I wouldn't like to——

The Court. That is just a matter of mechanics in that particular designation.

Mr. McGovern. That's right.

The Court. But your willingness was to produce any witness who testified, was taken in the inquiry?

Mr. McGovern. That is still our position.

The Court. Well, then can you tell me this: What is there that impels you to hold back the inquiry itself?

Mr. McGovern. A hundred and fifty years of tradition.

Mr. Colby. If Your Honor please, if I may [77] interpose a word, the inquiry was not made for the purpose of litigation. There is within this ambit of the matters that the inquiry went into a small area, let us say, twenty-five or thirty percent that involves the same kind of questions as we are concerned with in the litigation.

Now if the witnesses are witnesses who are needed for the litigation, we will take their testimony before the Court of Inquiry. We will review that and eliminate anything that the national defense—declassify that part of it and make it available for us with reference to the litigation.

What Mr. Brush wants to do is that in order to see this part that is relative to the litigation at his convenience, he wants to—he wants a disclosure of all of the rest of the proceeding which has to do with military matters. Now some of these other witnesses may have testified exclusively on military matters. It all depends according to the circumstances of the case. Now mind you, the Department of Justice has never seen this and will never see it. All we will ever see is the declassified parts of the

testimony of the witnesses which is determined to be pertinent to the litigation, and the first determination of pertinence to the litigation is the selection made by counsel, opposing counsel to the Government of the men he thinks may testify.

Now we are just unwilling to disclose the entire thing. I say we are—I mean in this instance the Navy [78] Department. They do not wish to disclose their military investigation just because part of the military investigation overlaps with a litigation investigaton.

The COURT. Now, then, these statements which would be furnished the witness would be statements deleted of everything except factual declarations in respect to this accident?

Mr. COLBY. It will delete the military.

Mr. HAYES. Delete the classified.

Mr. COLBY. Opinions.

Mr. HAYES. Not necessarily. It might be things of that sort which he wants, but some of those things contrary to what Mr. Crenshaw says are permeated with security matters, plans and so forth.

* * * * *

[79] The COURT. Let me ask the Government this. Why could not the statements of these witnesses be subjected to the deletion that you mentioned and thus qualified for declassification and then delivered as such?

Mr. COLBY. Our point is that there has been no good cause shown for going over all of the witnesses who testified, primarily with respect to military matters undoubtedly, and picking them out. In other words, if Mr. Brush and Mr. Crenshaw have witnesses that will be pertinent to the litigation and will indicate them, then we will endeavor to pick

them out, but the business of taking the witnesses who testified to matters not pertinent at all to the litigation [80] and going over their testimony is, we submit, in the advance of a showing of good cause, quite an unreasonable burden upon the security officers and the office of the Chief of Naval Operations.

Remember, this is not a matter which the lawyers have anything to do with. This is not business for lawyers. This is business that Mr. Brush wants to enter into the Navy part of running the Navy, and get out of the naval part of running the Navy certain information which he thinks may in part impinge upon the litigation.

The COURT. Let me ask you this then. If Mr. Brush and Mr. Crenshaw designate certain witnesses who have not yet been produced, or who have not been interviewed by them, is the Government willing, then in advance of calling them to give opposing counsel these declassified statements of their testimony?

Mr. COLBY. Well, now, did I understand—do I understand Your Honor has in mind, for instance, it's been said that we are going to produce, to testify at the trial the following additional men—would the Government produce as the unclassified portions of their testimony in advance. Now that may be that the Navy Department can arrange to have that done.

* * * * *

[83] The COURT. Now, then, the Government is willing that you have that testimony after there has been taken from it anything that does not relate to this particular——

Mr. CRENSHAW. I don't understand that they say that that is the point.

The COURT. I understand that they are willing to produce, if you insist on it, the forty witnesses.

Mr. CRENSHAW. Well, we are willing if they will go along with that.

The COURT. And to give along with each witness his statement deleted of classified portions. Now that seems to me of right much of a burden to impose on the Government, but if they prefer that to producing the report or the transcript, it seems to me that is their concern.

Mr. COLBY. Now, if Your Honor please, no one in the Legal Department of either the Navy or the Department of Justice would have any authority to agree to that at all. That would have to be passed upon by the security people and [84] by the people generally in the Office of the Chief of Naval Operations. You are only dealing here, you see, with people who, like Mr. Brush, are concerned with the litigation. All of this matter of how to run the Navy is entirely outside of the control of the lawyers.

The COURT. But that is the proffer of the Government today, is it not?

Mr. MCGOVERN. We don't proffer anything, Your Honor. I think we are going to get to our next problem right now.

The COURT. You tender a willingness, though, to produce any of the witnesses who appeared before the Board of Inquiry?

Mr MCGOVERN. Your Honor, we say first he hasn't——

The COURT. But assuming that he has shown——

Mr. MCGOVERN. Then we say we are entitled to his statements——

The COURT. Let us leave that out.

Mr. MCGOVERN. If you are going to order us to produce our witnesses' statements and at the same time tell Mr. Brush that he is privileged against producing his statements——

The COURT. I am not talking about any order at this time. I am asking you if it isn't a fact——

Mr. MCGOVERN. All we are trying——

The COURT. I understood it was very clearly stated [85] that the Government was willing to produce any or all of the witnesses who went before the Board of Inquiry, and when it produced them it would hand to them so much of their previous testimony as was not classified.

Mr. MCGOVERN. That is correct.

The COURT. And that is the tender of the Government?

Mr. CRENSHAW. Does the Government make that tender now?

Commander BLOCHER. Your Honor, there is no one standing in this courtroom that can make that proffer because the record itself is now, as I stated before, classified confidential. It will have to be declassified. It will have to be passed upon by someone other than here who is empowered to do it.

The COURT. But that is what Mr. MCGOVERN said was the standard procedure approved in the *Oregon* case and approved in the *Reynolds* case.

Mr. MCGOVERN. I think the answer, you're talking about forty witnesses, and which, we were talking about the witnesses who, the fifteen witnesses whom we knew had testified with respect to the collision. Now Mr.—Commander Blocher is worried lest we promise the production of a witness, all of whose testimony was in the words of Commander Hayes, permeated with classified——

[86] The COURT. No, I am just dealing with those witnesses who are connected with the collision.

Mr. MCGOVERN. If we are talking about a so-called eyewitness for the fact witnesses' case, we have been able to carry out the Oregon-New Mexico situation

before and there is no reason why we should not be able to carry it out again.

The COURT. When I say eyewitnesses, I mean also what you might call documentary witnesses, the witness who has the log referring to these maneuvers, or the report of what happened. I do not think we are apart on that.

* * * * *

[87] The COURT. Well, if the Government examines that transcript and finds that those additional nineteen have testified on matters pertinent to this collision but not of a military nature, is not the Government willing to produce those? I understood it was.

Mr. MCGOVERN. (Nodded.)

* * * * *

[89] The COURT. No, wait a minute. You just give Mr. McGovern that list of the nineteen that you want. Then he can ascertain the willingness or unwillingness of the Government to produce those men, together with such parts of their testimony as deals with other than military secrets, and my present inclination now is to order that production because I think that follows the *Reynolds* case. I do not feel disposed to order the production of the whole transcript of the Board of Inquiry, but I think we ought to go as for as the *Reynolds* case has gone, and from what I mention, I think that is the course of the *Reynolds* case.

* * * * *

[90] The COURT. I think I can go as far as ordering the production of these nineteen men.

* * * * *

The COURT. In other words, just follow the Reynolds decision.

Mr. CRENSHAW. All right, sir.

The COURT. You can give those to Mr. McGovern when we finish this hearing. There was your motion now about the [91] production by the Texas Company.

Mr. MCGOVERN. May it please the Court, it is getting quite late and we have been through this thing three or four times. We have a motion with an affidavit for the production of the statements taken after the collision by the various persons who represent the Texas Company, and I have received a brief there, and they take the position on the Texas Company personnel records, medical records, and physical examinations, on Upton—Upton is the man who is supposed to be blind in one eye—Riche is the man, the mate, whom we said according to the Coast Guard, had a cold and John D. Cain.

Now they claim as follows: Personnel records of any large company are of confidential nature and should not be disclosed without cause.

The COURT. Wait a minute. You are asking for——

Mr. MCGOVERN. Personnel records, Texas Company.

The COURT. Personnel?

Mr. MCGOVERN. Personnel, medical and physical examination.

The COURT. Of the Texas Company on whom?

Mr. MCGOVERN. This lookout, their mate and their captain.

The COURT. Is there any objection?

Mr. MCGOVERN. Confidential. Then these as to the [92] statements, reports, and memorandum of Captain Mackey or Admiral Holden; M-a-c-k-e-y was the Marine Superintendent or the Assistant Marine Superintendent of the Texas Company, who, according to our information, was waiting on the dock when the ship came in and to whom in ordinary course of business a report and an interview by the captain and the persons who were on watch should have been given.

Now the answer to that one is that there were no statements taken or issued by Captain Mackey, nor is there any report made by him to the Texas Company.

Then we made a motion for the statements and memorandum of Admiral Holden. Now Admiral Holden is a U. S. N. R. Admiral, but at this particular time he was in private employment working for the underwriters on the Texas Company ship. He also was, according to our information, at the dock when the ship came in Philadelphia after the accident, and also he attended and appeared——

The COURT. What do you want from him?

Mr. MCGOVERN. We want reports made, statements taken or memorandum of interviews of witnesses by him.

Now we have on that, their report was there were no reports, statements or interviews taken by Admiral Holden. Now there are two people in quite ordinary business life who might normally by a person of ordinary business experience be expected to have some paper work.

[93] Now Marine Office has nothing on the case. Underwriters has nothing on the case, either. Then I asked if there were any statements of Upton, Smith, Riche, and Cain, these other people were the lookout, the helmsman, mate and master, which were not taken by attorneys. The answer is there were no such documents, and accordingly motion does not lie. So I am getting down to the question of who took what statements there are in the case. What is there which corresponds in a business way to a business-type investigation, and I have now run through the normal people who might have them, and so I am right up to the fact that the investigation was conducted by an attorney. Then it says as to the statements, reports, interviews

of Upton, Smith, Riche and Cain which were taken by attorneys. They say that information can't be obtained because we have not shown any special circumstances which would warrant the revealing of the attorneys' work product.

I submit that the Court has just finished imposing upon the Navy one of the most difficult burdens I have seen in a long time with respect to production of witnesses purely upon an attorney's statement that he would like to see what they had to say at a time more close to the collision than the present.

I am interested in precisely the same information. I am interested in what the witnesses said right after the [94] accident when they came in at Philadelphia, and they met whomever they met. I assume they didn't meet the Marine Superintendent and the chief of the underwriters by himself. He was accompanied by the attorney, and I am sure the attorney was there.

The attorney made an investigation, but that investigation, we are going to be kept up in the air on that. That particular one—I am being criticized for what I regard as perfectly good manners in the brief as it was here. Indeed, upon the taking of the deposition, Smith, the Government made no request for the earlier statements despite its earlier plea therefor.

* * * * *

The COURT. Let us see what Mr. Crenshaw's objection is to it?

Mr. CRENSHAW. Could I have Mr. Brush answer?

* * * * *

Mr. BRUSH. [101] * * * Now we come down to the statements of the witnesses and, as I say, I state to Your Honor that we have, as lawyers, taken statements of Mr. Smith, Mr. Riche, Mr. Cain. We were unable to get a statement from Mr. Upton, although there was a personal injury report for him filled out

which has a narrative, a paragraph or so, that has been supplied to his counsel, and a copy we will be very glad to supply to the Government, if that is what they want.

The point that we make about these other statements is that they are counsel's statements, and unless there are reasons for producing them, we don't think they should be.

* * * * *

[104] The COURT. I take it you gentlemen will be a little while longer. I wonder if we had not better let this go over until tomorrow morning?

Mr. MCGOVERN. I will be through in two minutes.

The COURT. A lawyer's two minutes is a long time.

Mr. MCGOVERN. If you will, sir, the investigation which Mr. Brush says was conducted solely with an idea of litigation is privileged, but the investigation that was conducted solely with the idea of military information is not privileged—it is with that that we would like the Court to address its attention.

* * * * *

[111] The COURT. Well, I think you would be fully protected. I think the order should allow the inspection of these papers except such as were taken by attorneys. I will not require that they be produced.

Going back to the order in respect to the Government's production of the transcript of the Naval Inquiry, I want to be perfectly clear in regard to that. I am simply ordering that the Government follow the procedure that it said was approved in the Oregon case and is obviously approved in the Reynolds case, and that is that it examine the transcript and ascertain what witnesses deal with these maneuvers, and have them ready to testify in respect to that part of their testimony, and only that part; that is, excluding

any of the military testimony before the Board of Inquiry.

Mr. McGOVERN. That would be by Friday.

The COURT. Well, I understood you to say you could produce them Friday or Monday.

Mr. McGOVERN. Can you hear the Judge?

Mr. HAYES. May I say something?

Mr. McGOVERN. Come on up; he can't hear you back there.

Mr. HAYES. We are in no position to say just how long it would take to go through that pile. We think we might be able to do it by Friday. We'd like to come back to [112] you and ask for an extension of time should that prove necessary because we have to get a security officer appointed——

The COURT. I understand that you cannot do any more than you can do.

Mr. HAYES. Yes, sir. Well, we will do everything we can to have it Friday.

* * * * * *

Excerpts From Hearing, September 26 and 30, 1955

* * * * *

[355] Mr. McGOVERN. We have two orders before you; one is our order for production, now we have received the medical on the man, Upton, but we haven't received the other files on the two witnesses Riche and Cain, which we were entitled to under what I understood the Court's direction was and we have in turn without waiting for an order, because Mr. Crenshaw needs the material right away, we have provided him with the declassified testimony that we were ordered to give, without having a formal order. Now I submitted a formal order in both cases and I do think before we go into his witnesses who will come around sometime on Monday, that I ought to have

the order entered or at least the material furnished and that certainly in order to correct my situation, my having accounted——

The COURT. Every order that you have tendered has been entered with the exception of one you left today.

Mr. MCGOVERN. Oh, I see.

The COURT. I do not see any occasion for the one you left today, why it is necessary, because it shows on the record already.

Mr. MCGOVERN. Well, that is the one which recites that we have been ordered to produce and we have produced.

The COURT. I say it shows on the record already. I think it does. It has been so long ago I have forgotten it, but the rules that were made are of record.

Mr. MCGOVERN. Your Honor, I have no difficulty in [356] arguing the ruling and I certainly don't want to, intend to say that want to get them in an order. It's just we have complied with the direction which was on the record. Mr. Crenshaw has certified that we had complied.

* * * * *

[700] Mr. MCGOVERN. Your Honor, I understand that—I don't in any way want to question the Court's ruling and I'm not here to reargue a point that has been decided against me on discovery, but I am concerned lest when I get to another court, contention is made that at this point I should have demanded the Captain's statement to Mr. Brush and made some exceptions to it. Now I don't want to disturb the surroundings in any way——

The COURT. Well, it is in the record that you did ask for it and that your objection runs through the case.

Mr. MCGOVERN. I just wanted to make sure. Mr. Brush, is that agreeable with you?

Mr. BRUSH. Sure.

Mr. MCGOVERN. I see no sense in making useless demands, but I have been other places where they say I should have done it.

The COURT. Suppose we take a break here. Mr. Marshal, take a short recess.

* * * * *

Government Exhibit No. 15, October 3, 1955

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
Washington 25, D. C.

30 SEPTEMBER 1955.

From: Chief of Naval Operations.
To: Judge Advocate General (Admiralty Division).
Subj: U. S. S. *Ruchamkin*—S. S. *Washington*—Collision—14 November 1952.
Ref: (a) JAG (Adm. Div.) ltr JAG:VI:CAB:vmp of 29 Sep 1955.

In reply refer to Op-342J/ag Ser 949P34.

1. By reference (a), the JAG requested information whether under the maneuvering doctrine, effective in November 1952, an order issued to a unit to close or rejoin a formation without specifying any particular station, required a further order before the unit was permitted to enter and become a part of the formation.

2. In reply to reference (a), the Chief of Naval Operations considers the answer to the above question in the affirmative. The pertinent extract from the tactical maneuvering doctrine effective in November 1952 is quoted for information: "An order to close or to rejoin means that the unit addressed is to come closer to receive further orders, and does

not in itself order the unit to take up any particular station. A unit ordered to close or rejoin is not to enter the formation without further orders".

(S) E. T. Sands,
E. T. Sands,
By direction.

Department of the Navy

Office of the Judge Advocate General

Washington 25, D. C.

29 September 1955.

From: Judge Advocate General (Admiralty Division).
To: Chief of Naval Operations (Op–342).
Subj: U. S. S. *Ruchamkin*—S. S. *Washington*—Collision—14 November 1952.

In reply to JAG: VI: CAB: vmp.

1. Information is requested as to whether in November 1952, under the then applicable maneuvering doctrine, an order issued to a unit to close or rejoin a formation, without specifying any particular station, required a further order before the unit was permitted to enter and become a part of the formation.

Ira H. Nunn,
(S) E. B. Hayes,
E. B. Hayes,
By direction.

In the United States District Court for the Eastern District of Virginia, Alexandria Division

In Admiralty—No. — Consolidated Cause

UNITED STATES OF AMERICA, OWNER OF THE U. S. S. "RUCHAMKIN," LIBELANT AND CROSS-RESPONDENT

v.

THE TEXAS COMPANY, RESPONDENT AND CROSS-LIBELANT

ORDER

The motion of the United States for inspection and copying of documents under Admiralty Rule 32 having come on to be heard and the matter having been fully argued, it is hereby

Ordered that the motion is granted as to The Texas Company medical records and physical examination records on James A. Upton, Oliver F. Riche, and John D. Cain;

The motion is denied as to the reports made by or to Captain R. E. Mackey and by Edwin I. Holden, Jr., upon the representation of counsel for The Texas Company that no reports were made by or to Captain Mackey and that the only report made by Edwin I. Holden, Jr., was that filed with the United States Coast Guard;

The motion is denied as to the statements, reports, and interviews with James L. Smith, Oliver F. Riche, and John D. Cain which were taken by attorneys; to which denial the exception of the Government is duly noted, making it unnecessary for the Government to reassert this issue at the trial.

/S/

U. S. D. J.

Alexandria, Virginia, 9–30–55.

In the United States District Court for the Eastern District of Virginia, Alexandria Division

In Admiralty—No. — Consolidated Cause

UNITED STATES OF AMERICA, OWNER OF THE U. S. S. "RUCHAMKIN," LIBELANT AND CROSS-RESPONDENT

v.

THE TEXAS COMPANY, RESPONDENT AND CROSS-LIBELANT

ORDER

The motion of The Texas Company for discovery inspection of the testimony of the witnesses for the Navy Board of Investigation having come on to be heard and the objections of the Government duly noted, it is hereby

Ordered that the Government produce the declassified testimony of each of the witnesses whose names are listed below:

ENS Frank W. Gilliland
LT JG Daniel P. MacLean, Jr.
Eugene Erwin Ricker, RD3
ENS Donald H. Northrop
James Leddy, YNSN
LT Arthur F. Maischoss
Walter P. Larkin, RD3
James P. Hering, RD3
CDR George H. Whiting
CDR David L. House
Seaman Angelo Latore
Seaman Roberto Laurel
Seaman Bernard Blackwell (Blackmer)
LT Lester Campbell
LT Robert R. McArthur
LT Theodore M. Slabey
CDR Oscar D. MacMillian
CAPT H. S. Persons
CAPT C. N. Day
LCDR A. C. Jackson
ENS G. G. Jarboe
R. E. Gorene, RD2
Clement E. McElroy, SA
Charles T. Ryan, QM1
L. A. Thiesen, QMSN
Paul Wells, RDSN

to which the exception of the Government is duly noted.

U. S. D. J.

United States District Court, Eastern District of Virginia, Alexandria Division

In Admiralty—Nos. 953 and 954

THE TEXAS COMPANY, AS OWNERS OF THE TANKER "WASHINGTON," LIBELLANT,

v.

UNITED STATES OF AMERICA, AS OWNER OF THE U. S. S. "RUCHAMKIN," ETC., RESPONDENT,

Receipt is hereby acknowledged of the declassified testimony of the following witnesses before the Naval Board of Inquiry, furnished by the Government on order of the Court and saving to the Government its continuing exception to that Order:

Cdr. George H. Whiting	Lt. Lester Campbell
Cdr. David L. House	Lt. Robert R. McArthur
Seamen Angelo Latore	Lt. Theodore M. Slabey
Seaman Roberto Laurel	Cdr. Oscar D. MacMillian
Seaman Bernard Blackwell (Blackmer)	

(S) FRANCIS N. CRENSHAW,
BAIRD, WHITE AND LANNING,
Proctor for Texas Company.

Alexandria, Virginia. Date: September 19, 1955.

United States District Court, Eastern District of Virginia, Alexandria Division

In Admiralty—Nos. 953 and 954

THE TEXAS COMPANY, AS OWNERS OF THE TANKER "WASHINGTON," LIBELLANT

v.

UNITED STATES OF AMERICA, AS OWNER OF THE U. S. S. "RUCHAMKIN," ETC., RESPONDENT

Receipt is hereby acknowledged of the declassified testimony of the following witnesses before the Naval Board of Inquiry, furnished by the Government on order of the Court and saving to the Government its continuing exception to that Order:

ENS Frank N. Gilliland
LTJG Daniel P. MacLean, Jr.
Eugene Erwin Ricker, RD3
ENS Donald H. Northrop
James Leddy, YNSN
LT Arthur F. Maischoss
Walter P. Larkin, RD3
James P. Hering, RD3

(S) FRANCIS N. CRENSHAW,
BAIRD, WHITE AND LANNING,
Proctor for Texas Company.

Alexandria, Virginia. Date: September 19, 1955.

United States District Court, Eastern District of Virginia, Alexandria Division

In Admiralty—Nos. 953 and 954

THE TEXAS COMPANY, AS OWNERS OF THE TANKER "WASHINGTON," LIBELLANT

v.

UNITED STATES OF AMERICA, AS OWNER OF THE U. S. S. "RUCHAMKIN," ETC., RESPONDENT

Receipt is hereby acknowledged of the declassified testimony of the following witnesses before the Naval Board of Inquiry, furnished by the Government on order of the Court and saving to the Government its continuing exception to that Order:

CAPT H. S. Persons LCDR A. C. Jackson
CAPT C. N. Day

(S) FRANCIS N. CRENSHAW,
FOR BAIRD, WHITE AND LANNING,
Proctor for Texas Company.

Alexandria, Virginia. Date: September 26, 1955.

United States District Court, Eastern District of Virginia, Alexandria Division

In Admiralty—Nos. 953 and 954

THE TEXAS COMPANY, AS OWNERS OF THE TANKER "WASHINGTON," LIBELLANT

v.

UNITED STATES OF AMERICA, AS OWNER OF THE U. S. S. "RUCHAMKIN," ETC., RESPONDENT

Receipt is hereby acknowledged of the declassified testimony of the following witnesses before the Naval

Board of Inquiry, furnished by the Government on order of the Court and saving to the Government its continuing exception to that Order:

ENS G. G. Jarboe
R. E. Gorene, RD2
Clement E. McElroy, SA
Charles T. Ryan, QM1
L. A. Thiesen, QMSN
Paul Wells, RDSN

(S) FRANCIS N. CRENSHAW,
FOR BAIRD, WHITE AND LANNING,
Proctor for Texas Company.

Alexandria, Virginia. Date: September 26, 1955.

In the United States District Court for the Eastern District of Virginia, at Alexandria

Civil 780, 953, 954, 1203, 1217–1222 inc. and 1230

THE U. S. S. "RUCHAMKIN" AND THE S. S. "WASHINGTON"

MEMORANDUM BY THE COURT

The U. S. S. *Ruchamkin* and the tanker *Washington,* of The Texas Oil Company, collided in the Atlantic about fifty miles off the coast of Virginia, just below Cape Henry, soon after two o'clock on the morning of November 14, 1952, with resulting loss of life and personal injuries as well as damage to both ships. Throughout the night the weather was fair, the sky clear, and the wind light, with a smooth sea. A fast destroyer escort, the Navy ship was joining from the rear a formation of ten other naval vessels moving westwardly in an amphibious operation aimed at the Virginia shore. The *Washington,* out of a

Gulf port and bound for Philadelphia, was on a northerly heading and had passed through the screen of the formation as it slowed to let her through. Previously hidden from each other by an intervening heavy vessel of the main body, the *Ruchamkin* and the tanker met as the tanker crossed ahead of, and as the *Ruchamkin* on the off side and at top speed was overtaking, the intervening ship. The present litigation consists of reciprocal libels between the United States and The Texas Company for the ship injuries, libels against the Company on the death claims, and the petition of the Texas for exoneration or limitation of liability.

On the preceding evening the flotilla had left Norfolk on a mock amphibious attack—Operation Seascape—upon Camp Pendleton, located immediately south of Virginia Beach. The task force consisted of a screen of four vessels in a "bent line" or arc protecting a main body of five heavy ships formed in a circle with a radius of 1,000 yards and the flagship in the center. The chord of the screen was a stretch of five or six miles. On this night only four ships were in the screen because the *Ruchamkin*, though a screen vessel, was away on a sortie to retrieve a shore detachment and to return with them to the formation at midnight.

U. S. S. *Fremont* was the flagship and guide. In addition to her captain, she carried the Officer in Tactical Command (OTC), in charge of the entire formation. On the extreme left of the screen was the U. S. S. *Corry*, the *Lloyd* next, then the *Hollis* carrying the screen commander as well as her own master, and the *O'Hare* farthest to the right, all destroyer-type craft. The wing tip ships—the *Corry* and *O'Hare*—were stationed 5,900 yards from the guide and 75° to each side of her base course line, while the

two inner screen vessels were distant 3,700 yards from the guide and, respectively, 33° to the right and left of the base course. Around the flagship were the *Glynn*, directly forward; the *Capricornus*, nearly abeam to starboard; (the *Carter Hall* was to have been on the *Fremont*'s starboard quarter but was detained for repairs and never participated in the maneuvers); the *San Marcos* astern of the flagship; the *New Kent* on the port quarter; and the *Newport News* broad on the *Fremont*'s port bow.

The formation steamed almost due east from the Virginia capes. Outbound the Newport News on radar picked up the *Washington* to the south, on a northerly course, inshore of the flotilla, and the Newport News almost constantly thereafter maintained a track on her. Originally the Navy unit planned to turn south when about sixty miles at sea, and when opposite "Point Yoke"—Camp Pendleton—to head west for the assault. Before reaching the end of the first leg, however, the OTC discovered that an aircraft carrier group was maneuvering south of him and he, therefore, abandoned his intended course change in that direction; instead, the flotilla switched to due north at 0055. About 0115, the flotilla swung from north to west, 270° T. At 0150 again the course was changed, this time to 257° T. The last alteration was necessary to bring the group into Camp Pendleton—to compensate for the abandoned southward movement. Their speed was 14 knots.

In the meanwhile the *Washington*, with all regulation lights burning, was on a course of 7½° T. (9° gyro) and a speed of 14½ knots, her presence well known to the flotilla. She had passed the aircraft carriers and now saw more white lights to starboard, both forward and abeam, and some on her port bow. None seemed nearer than five miles. Save for a tem-

porary deviation to port to give ample way to an unidentified southbound ship, she steadily maintained her course and speed.

The combat intelligence center (CIC) of the *Fremont* had the *Washington* on her radarscope at a range of thirteen miles just before the flotilla changed from its 270° T. course at 0115. Other ships of the group also held the *Washington.* The flag did not consider her to be a threat to his formation, for he reckoned that the *Washington* would pass astern of the group. But when the formation changed to 257° T.—at 0150, twenty-some minutes before the accident—the *Washington,* then off the *Fremont's* port bow at a distance of ten miles, was computed to be on a collision course with the *Capricornus,* collision predicted at 0209. This solution was thereafter verified at short intervals, and about three minutes later the *Washington* was bearing 229° T. with a range of 6.7 miles from the *Fremont,* and next at a range of 3.9 miles, bearing 230° T. About 0202 it appeared she would pass through the center of the formation, her closest point of approach being 1,700 yards from the *Fremont.* This information was published generally throughout the flotilla at a time when the *Ruchamkin* was in the area. Because of sea return or other interference, after 0202 the *Washington* was no longer observable on the flagship's radarscope.

At 0205 the formation's speed was reduced from 14 to 8 knots, then to 5 knots at 0207. The *Washington* had not yet passed through the screen. The purpose of the speed reductions was to let her through. (The clocks of the flotilla were possibly two minutes ahead of the tanker's, but the times here are those of the Navy.) On the *Washington,* soon after 0200, the second mate having her con saw two red lights almost dead ahead or fine on the starboard bow,

"bright" and "close of me and going across my bow." Immediately he ordered the tanker to 23° gyro (21½° T.) from her base course of 9° gyro (7½° T.). The two red lights were undoubtedly the port side lights of the *Hollis* and the *O'Hare* (the vessels of the right wing of the screen). When these two red lights were well on the tanker's port bow, she went back to 9° gyro or 7½° T. She had passed between the *Hollis* and the *Lloyd*, about a half-mile from the latter, more than a mile from the *Hollis*, and 1,200–1,500 yards ahead of the *Glynn*, the lead-ship of the main body.

Just after he had steadied on 7½° T. and was passing the *Capricornus* (the main body's starboardmost ship) the mate saw another red light "very close to my starboard hand, and coming across from my starboard bow to my port bow at a terrific speed." Immediately he gave the tanker hard left rudder and sounded two blasts on her whistle, followed by several short ones. The red light was the *Ruchamkin* as she sped across the *Washington*'s bow. Within seconds the vessels collided, the *Washington*'s stem ramming the *Ruchamkin* a bit aft of midship. It was 0213 *Washington* time, possibly 0215 *Ruchamkin*'s.

Earlier the *Ruchamkin* had completed her mission and had tailed the formation while it was still steaming eastwardly. About 0138 she reported to the screen commander by voice radio her readiness to join, and in reply was told to wait. At 0140 she reported her arrival to the guide and received acknowledgment at 0155, but her message did not reach the *Fremont*'s bridge until after the collision. She was then on the starboard quarter of the main body, bearing 065° T. from the flagship and 6,500 yards distant—she had followed around to the right of the group as it changed courses. No warning of the approach of the *Washington* was ever specially given to

the *Ruchamkin* by the guide or by any other ship in the formation. Her commander testified that he had not received the reports which the *Fremont* had been releasing concerning the tanker. Moving with the same speed as the main body, while waiting, the *Ruchamkin* was next directed by the screen commander to move to a position from which, when ordered, she could assume her station in the screen—immediately to the north and right of the *Hollis*. The tanker was then preparing to go through the screen—on the other side of the *Hollis*—her course 7½° T.—then 21½° T.—then 7½° T., the *Ruchamkin*'s 260° T.

For taking position the command to the *Ruchamkin* was to expedite, i. e., to hurry or move "smartly." With engines rung up to 22 knots, she coursed along the right side of the main body, almost parallel to the formation—a divergence of only 3°—and 1,000 to 1,500 yards from the nearest ship. In effect told to disregard the speed reductions, the *Ruchamkin* was ordered by the screen to "continue to expedite." She obeyed. Still no special warning was given her of the *Washington*'s presence inside the screen, though she was in plain view of every vessel of the whole flotilla save the *Ruchamkin*. Indeed, before the *Ruchamkin* encountered the *Washington* the formation had been ordered to resume 14 knots, another assurance to the *Ruchamkin* that all was clear.

The intervening main body—"cargo lights, porthole lights, and mast lights, or what you have from this formation"—obscured the *Washington* and the *Ruchamkin* from each other. Then on a 260° or 265° T. course and overtaking what she thought was the *Carter Hall* (not being advised of the latter's absence), but which in fact was the *Capricornus*, the *Ruchamkin* noticed that the next vessel, believed to be the *Glynn*, apparently was closing her. In truth

it was the tanker, at a range of not more than 1,000 yards. At once the Navy ship went to 270° T., then to 275° T. and then to full right rudder. Only a directional change of 28° was accomplished. She shot across the tanker's bow. Collision followed, within a minute or two from the moment the one observed the other.

Stressing that radar perception does not relax the rigor of the International Rules and insisting that the *Washington* was throughout the burdened vessel in a crossing situation, the United States lays blame to the tanker, in that, she did not give way to the flotilla as a unit or as separate ships. 33 U. S. C. A. 104. Conceding the premises the tanker contends, however, and the court agrees, that neither before nor after the tanker entered the screen—the two pivotal stages of the case—did the *Washington* breach the right-hand rule. Indeed, no transgression of any sort was committed by any vessel before the tanker passed through the screen. The cause of the collision was the Navy's breach of the special circumstances mandates of the Rules while the *Washington* was in the midst of the flotilla. 33 U. S. C. A. 112, 121.

I. Assuming, as the Government asserts, that the tanker had been apprised by public notices of the Navy's plans for Seascape, she was not thereby burdened more heavily than to anticipate the appearance of the Navy ships and to avoid unnecessary interference with them. But even if it was the *Washington*'s duty to give way to the formation—if the starboard hand rule accorded precedence to the flotilla as a whole—she had no opportunity to defer. As she stood up the coast, the *Washington* had passed one naval group, and if she was to expect another, nothing in the later lights revealed the arrival of a second for-

mation. Moreover, initially the flotilla planned to move south on its first turning, and thus the tanker might reasonably have believed she would escape the formation entirely.

The merchantman had before him only a maze of white lights. Well could they have marked a fishing fleet or a number of unassociated freighters. All hands agree tat traffic was very thick that night. The lights were all within the customary lanes of coastwise shipping and in the routes of vessels bound for and out of the Chesapeake Bay ports. For the last hour the ships of the screen had been repeatedly altering position, as they oriented and reoriented, the main body also, though less radically. These movements aggravated the confusion of the lights. Blinker as well as light signals from the naval vessels were not intelligible to the stranger and she is not blameworthy for having earned nothing from them. Consequently, even if it had been the duty of the tanker to go astern of a naval formation, she had no warning she had met one.

Besides, until 0150, only slightly more than twenty minutes before the collision, the *Washington* was not a threat to the flotilla; as tracked, she would pass astern of the group. At that late hour the guide established a collision course with the tanker by turning the flotilla to 257° T. from 270° T. To be sure, the flotilla was entitled to change course, but this alteration was just another factor rendering avoidance of the flotilla more difficult.

In this connection it must be remembered, too, that the tanker and the flotilla were meeting at less than a right angle. Also, because of the eastwardly receding curve of the southerly end of the screen arc, the tanker was not in a situation involving risk of collision with the flotilla until she was beyond the path of the south-

ermmost ship of the screen, the *Corry*. Hence the tanker did not have the choice of skirting the flotilla. At all event, neither of the two left wing or southern vessels of the screen (the *Corry* and the *Lloyd*) ever tendered collision. When the tanker neared, but before she pierced the screen, both the *Corry* and the *Lloyd*, as we have seen, diminished their speed markedly. Their bearing thus did "appreciably change" and risk of collision disappeared. As the *Washington*'s mate said, these ships slid down his starboard hand and dropped astern of him.

Therefore, the tanker in not at once yielding to the flotilla—in not going astern of the *Corry* or the *Lloyd*—did not violate the right hand rule. While the OTC's decreases of speed were purposed, commendably enough, to minimize the dangers incident to the meeting, those dangers sprang principally from the Navy's desire to maintain a unified formation, a unity which demanded exclusive occupancy of almost twelve square miles of the sea at all times and which had embarrassed the *Washington* a limine. But having slowed his ships, the OTC intended for the tanker to continue as she did. On glimpsing the red side light of the *Hollis* to starboard, however, the *Washington* immediately righted her wheel—going from 7½ T. to 21½ T.—but returned to her original course as soon as the *Hollis* was away. The tanker did not attempt to pass eastwardly through the formation; the screen commander admitted that he was mistaken in so announcing to the flotilla.

Just as the tanker's behavior before she penetrated the screen was blameless, so for entering it she is not censurable. There was no other way for her. Had she stopped or slowed she would have been enveloped by the flotilla; had she gone astern of the *Lloyd*, she would have engaged the main body of the formation.

11. Furthermore, the *Washington* committed no fault of navigation after she moved into the field of the flotilla. When she resumed 7½° T. she was departing the formation, crossing the bow of the outermost heavy ship, the *Capricornus*, at a range estimated by the OTC as from 500–800 yards and by the watch of the *Capricornus* at 2,000–2,500 yards. Already she had cleared the *Glynn*, the van of the main body, by 1,200–1,500 yards. At this time the *Capricornus* was at five knots. (In an answer to interrogatories the Government stated that the *Capricornus* was a darkened ship from midnight until 0200; but the Government asserts this was an error, and the court so finds.) Obviously the flag considered the *Washington* safely away as she passed the *Capricornus*, for he thereupon ordered the whole flotilla to resume its regular 14-knot speed.

The meeting of the *Ruchamkin* and the *Washington* was not controlled by the starboard hand rule, for neither vessel could see the other. *Lind* v. *United States*, 1946, 2 cir. 156 F. 2d 231, 233. There is no acceptable proof that the tanker could visually have espied the *Ruchamkin*, or the *Ruchamkin* the tanker, before the other emerged from the obstruction of the *Capricornus*. Wholly incredible is the testimony of the tanker's lookout that he discerned the lights of the *Ruchamkin* before and just after 0200, reporting them to the bridge each time, and could recognize them as the ship with which the tanker collided. The court cannot find, as does the Government, any corroboration of the lookout in the testimony of the tanker's wheelsman. There is virtual unanimity among all the watch officers that so numerous were the lights that no particular ship was distinguishable. Even the screen commander lost sight of the *Washington* as her lights merged with the main body's.

Nor were they separable on the radarscope. With so many pips on the radarscope, the picture was like "a cluster of grapes" and individual identification almost impossible.

As the *Ruchamkin* was not in sight, the *Washington* was not required by Article 28, 33 U. S. C. A. 113, to give *Ruchamkin* a whistle signal of the tanker's return to 7½° T. A blast then might, incidentally have been helpful or it might have been confusing, but as it was not owed the *Ruchamkin*, its omission was not fault.

Governing here are the special circumstances rules, Articles 27 and 29, 33 U. S. C. A. 112, 121. Both vessels exerted themselves to the utmost to avoid collision after their presence was mutually disclosed. From that moment no negligence can be laid to either. Although "right hard rudder" by the *Ruchamkin* might have saved her, it is doubtful; her master was acting in extremis and he must not be judged too nicely. But earlier neglect of the Navy directly and proximately accounts for the collision.

No explanation is offered why the *Ruchamkin* did not receive and regard the advice repeatedly given the flotilla both by the OTC and by the screen commander of the tanker's progress; no reason is given why the *Ruchamkin* was not alert to the danger she might well anticipate from the stranger. In these respects she was negligent. Again, with the tanker proceeding between the *Lloyd* and the *Hollis* and the formation slowing to let her through, the screen commander nevertheless called the *Ruchamkin* to speed across the bows of the *Washington*, at the same time misjudging the course of the merchantman. For allowing the *Ruchamkin* to follow an order so plainly perilous, the OTC, too, was negligent. Though the expediting order established an obvious risk of col-

lision, no effort was made to caution the tanker against the imminent danger. Utterly ineffectual as a signal were the flashing lights sent her from the *Fremont*. Delayed until the tanker was passing the *Capricornus* and designed only to reprimand the *Washington* for traversing the area, they were focused not from a nearby ship but from the flagship, a vessel encircled by other ships. Light signals that night, had not been effective between the members of the naval group themselves—not even the screen commander could be raised by the *Ruchamkin* by lights.

If a private vessel, the *Ruchamkin* because of her negligence would be liable in rem, and her owner would be liable in personam, for the damage to the tanker. Hence here the United States must answer on both principles. Public Vessels Act, 46 U. S. C. A. 781. *Ruchamkin* is also liable under the in rem principle, and the Government in personam, for the negligence of the commodore and the screen commander. This liability is not fixed by virtue of a military chain of command; it is predicated upon what these officers did or left undone while present and in authority. Moreover, by reason of their authority to direct her moves, they were constructively aboard the *Ruchamkin*. As we later point out specifically, the *Fremont* and the *Hollis* are also liable under the in rem principle, and the United States in personam, for the negligence of the tactical officers respectively aboard them. No other ship in the flotilla is found guilty of tortious conduct.

The court has decided the issue of the in rem liability of the *Fremont* and *Hollis* because the Government requested a finding on this head. Each of these two vessels had her own master and the United States urges with much force and logic that, as the mistakes

of the tactical officers occurred in their actions as commodore and screen commander, and not in the navigation of the ships they were aboard, these vessels are not chargeable with such negligence. Strong precedent is cited to this point. *Publicover* v. *Alcoa S. S. Co.,* 1948, 2 cir. 168 F. 2 672, 678; *the Glaucus and City of Florence,* 1948, Law Reports (Eng.) Probate Division 95; *The Sobieski,* 1949, Law Reports (Eng.) Probate Division, C. A. 313. But in all of these cases the commodore's vessel was owned by another than the employer of that officer. Moreover, in each instance he was aboard or acting in that capacity without the invitation or desire of the owner.

On the other hand, instantly the tactical officer was on board at the direction of the owner; the vessel was furnished him by the owner for his tactical duties. There is nothing inequitable in holding the owner, and the ship it provided for him, responsible for the tactical officer's conduct. In *United States* v. *The Australia Star,* 1949, 2 cir. 172 F. 2d 472, 476, the Government's escort ship was held liable for failing to give both her escortee and a stranger-vessel warning of the approach of each other. True, there the escort's master and the escort officer were the same person; but, surely, the division of these responsibilities between two officers, instead of vesting them in one, does not destroy the principle. We find no repudiation of *The Australia Star* evinced in *United States* v. *The Adrastus,* 1951, 2 cir. 190 F. 2d 883.

Again, the argument of the Government would vitiate the intent of the Public Vessels Act. Its intendment is to render the United States suable and answerable for a want of care on the part of its authorized personnel in their acts upon its public vessels. *Canadian Aviator, Ltd., v. U. S.,* 1945, 324 U. S. 215, 224. In the present instance the commodore and the

screen commander were certainly lawfully aboard and did, or failed to do, that which was within their authority. In these circumstances the Act considers their conduct to be their ships'. Indeed, they each had the power to control the movements of the very ships that carried them. Under the Public Vessels Act the liability of the United States is traced through the ship, and if the tactical officer's negligence is not to be ascribed to the ship, then any liability of the United States for the negligence of such officers, no matter how grave, would be put in doubt.

Finally, proctors for the Government complain of the court's refusal to direct production before trial by the Texas Company of the statements of four members of the Washington's crew, "especially when the Government's Board of Inquiry testimony had been required to be turned over to The Texas Company" and because this was a "ruling for attorney privilege and against naval privilege." They request the court "for the benefit of the record" to "note the Government's contention." It is so noted, but it is fundamentally in error. Only because the statements were the personal work product of counsel was pre-trial access to this memoranda not allowed; at the trial the Government was unrestricted in its cross-examintaion of these witnesses; and not the slightest prejudice to the United States was suggested at the hearing. But as to the Government's production before trial, the fact is that nothing was "required" of it. The court ordered discovery in precisely the terms the Government itself had offered disclosure; no more was ordered than was tendered. Further, its proctors repeatedly disclaimed any privilege—specifically, on June 2, 1954, and again on September 13, 1955.

Adopting this memorandum as its findings of fact and conclusions of law, the court will on presentation

enter a decree in each of the death suits and in the limitation proceeding exonerating the Washington and The Texas Company, and will pass a decree in The Texas Company libels fixing liability upon the United States in accordance with the views herein expressed.

(S.) ALBERT V. BRYAN,
United States District Judge.

APRIL 17TH, 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1958

No. 1724

Office - Supreme Court, U.S.
FILED
JUN 7 1957
JOHN T. FEY, Clerk

IN THE

United States Court of Appeals

For the Fourth Circuit

No. 7286

EVELYN ECKERT, as Administratrix of the Estate of Edward James Eckert, Jr., Deceased, et al.,

Appellants,

v.

THE TEXAS COMPANY,

Appellee.

APPENDIX ON BEHALF OF APPELLANTS, ALLRED, BODE, BRIGHT, ECKERT, FULWILER

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FILED
OCT 15 1956
R. M. F. WILLIAMS, JR.
CLERK

SUPREME PRINTING CO., INC., 114 WORTH STREET, N. Y. 13, BEEKMAN 3-2320
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Witnesses in Order of Appearance

WITNESSES FOR THE GOVERNMENT

1. ROBERT STONE SMITH—R. 28

On staff of Commander, Amphibious Force, U. S. Atlantic Fleet; testified about the wide dissemination to newspapers and other news media of the projected assault landing known as Operation Seascape.

2. EMERSON HAYES, JR.—R. 36

On staff of U. S. Coast Guard Headquarters, Merchant Vessel Personnel Division; testified about Sea Manners and Coast Guard publication stating it is negligence for a single ship to pass through a fleet formation regardless of relative position and right of way (R. 38, 39); describes the difference in lights of a fishing vessel and a destroyer (R. 39, 40).

3. ARTHUR JAMES GREEN—R. 44

Staff, U. S. Navy, Hydrographic Office, Nautical Information, Maritime Safety Division; testimony concerning warnings in information bulletins, British Regulations and Joint Chief of Staff Regulations all similar to Coast Guard Sea Manners.

4. WILLIS G. PARTRIDGE—R. 55

Assistant Chief to the Aids to Navigation Section, Fifth Coast Guard District; testified about the Notice to Mariners concerning the amphibious operation and the request to vessels not to interfere (R. 56) and that notice was sent to Texas Company (R. 61).

5. MARVIN O. RICE—R. 63

Navy Hydrographic Office, Chief of Nautical Information Branch, Division of Maritime Safety; testified con-

cerning regular hydrographic broadcasts to all merchant vessels.

6. Bruce Wayne Pritchard—R. 69

Was on U.S.S. "Fremont", in the Combat Information Center; testimony describes radar equipment.

7. Eugene I. Ricker—R. 85

In U.S.S. Fremont Combat Information Center, radiotelephone operator for intercommunication.

8. Lt. Moorehead—R. 97

Deposition submitted concerning activity in the radar room of U.S.S. Fremont.

9. Mr. Poulin—R. 97

Deposition submitted concerning activity in radar room of U.S.S. Fremont.

10. Edward J. Cottrell—R. 99

Employed in Department of Defense; testified concerning press releases about Operation Seascape.

11. Paul Wells—R. 102

Radar man aboard U.S.S. Ruchamkin. Testified that at time of collision was in radar room.

12. Robert E. Gorenc—R. 129

Radar man aboard Ruchamkin.

13. I. L. McNally—R. 168

Expert on radar.

14. James K. Watson—R. 178

Testimony to correct an error in voice radio log.

15. James Smith—R. 181

Deposition submitted. Was helmsman aboard the S.S. Washington at time of collision; he recognized naval formation, *since they were heavy ships in formation and signalling.*

16. Capt. Day—R. 182

Commander of Operation Seascape naval group; testified that green sidelight of Washington was visible through binoculars when 7 to 9 miles away; that Washington was in a crossing situation; that when Washington passed into the screen he slowed the formation.

17. Adm. Henry Stanford Persons—R. 272

Screen commander aboard Hollis.

18. Charles Ryan—R. 341

Signal man aboard U.S.S. Ruchamkin; testified he had no trouble picking out individual ships.

19. Edward W. Walthal—R. 380

Officer of the deck of the O'Hare; deposition submitted.

20. Alexander J. Hoffmeister—R. 380

Officer of the deck of the Capricornus; deposition submitted, testified that the Washington passed 2000-2500 yards ahead of his bow and collision occurred 3000 yards off his starboard quarter.

21. McLaughlin—R. 380

Officer of the deck of the Newport News; deposition submitted.

22. Hanlon—R. 380

Officer of the deck of the Glynn; deposition submitted. Washington passed within 1200-1500 yards of the Glynn's bow.

23. Joyce—R. 380

Officer of the deck of the Lloyd; deposition submitted, testified he slowed down to avoid collision with Washington and thus permitted Washington to cross about one half mile ahead of him.

24. Catlin—R. 380

Officer of the deck of the Hollis; deposition submitted.

25. Charles W. Morris—R. 381

Messenger of the watch aboard U.S.S. Ruchamkin; deposition submitted.

26. Robert G. Fetterman—R. 381

After lookout of the watch U.S.S. Ruchamkin; deposition submitted.

27. John W. Jenkins Jr.—R. 381

Helmsman aboard U.S.S. Ruchamkin; deposition submitted.

28. Horgan—R. 381

Officer of the deck of the Ruchamkin; deposition submitted.

29. Hirshman—R. 381

Deposition submitted.

30. Dr. Cooper—R. 381

Custodian of records of institution where James Upton treated; deposition submitted.

31. Doctor Muckle—R. 381

The doctor who examined James Upton for Public Health Service; deposition to be submitted at a later date.

32. Dr. Taitoco—R. 381

Examined Upton at Port Arthur, Texas; deposition to be submitted later.

33. Rual B. Caldwell—R. 382 and 590. Testimony reprinted in full herein.

Quartermaster aboard Washington; Coast Guard testimony submitted; testified was not on bridge at time of collision; testified concerning limited visibility from wheelhouse of Washington.

34. Capt. A. C. Jackson—R. 383

Commanding officer, U.S.S. Ruchamkin; testified that when sighted Washington closing he went to right.

35. Charles W. Ellert—R. 480

Starboard lookout on Ruchamkin.

36. Ernest Boghosian—R. 483

Lighting specialist; electrical engineer; testimony concerning signalling device

37. JOSEPH C. CWALINA—R. 487

In charge of U.S.S. Ruchamkin engine room; his log shows time of collision 0215.

38. THEODORE MILAN SABUY—R. 489

Communications officer on staff of Commander of Transport Control Squadron 2 on the U.S.S. Hollis; testified was on watch in Combat Information Center.

39. LEDALE A. THEISEN—R. 511

Quartermaster on U.S.S. Ruchamkin; testified time of collision as 0215.

40. C. E. MCELROY—R. 514

Port lookout, U.S.S. Ruchamkin; Coast Guard testimony submitted; testified was not on duty for 1 hour prior to collision; took over duty immediately prior to collision.

41. GEORGE G. JARVOE—R. 515

Junior Watch Officer, U.S.S. Ruchamkin.

42. GEORGE H. WHITING—R. 530

Chief Staff Officer, Operations and Plans Office; testified saw lights of the Washington when she was 6 to 7 miles away.

43. CMDR. W[illegible]ITEHEAD—R. 585

Newport News Combat Information Center officer; deposition submitted.

44. CHARLES F. NELSON—R. 586

Staff Watch Officer; deposition submitted by Texas Company.

45. JAMES UPTON—R. 588. Testimony reprinted in full herein.

Coast Guard testimony submitted; lookout aboard Washington at time of collision; testified he saw lights of ship with which Washington collided 10 minutes prior to collision and rang bell notifying bridge that vessel was sighted.

WITNESSES FOR TEXAS COMPANY

1. WILLIAM R. BAGGER—R. 597

Consulting marine surveyor and appraiser; expert who examined Washington after collision.

2. OSCAR SMITH—R. 605

Former naval officer; testified concerning authority of a commander of formation and naval formations in general.

3. CHARLES M. LYNCH—R. 650

Port captain for Sinclair Oil Company; deposition submitted.

4. MILTON BRECE—R. 651

Port captain, Sinclair Oil Company; deposition submitted.

5. EDWARD M. ANDERSON—R. 652

Made wooden scale models of ships; deposition submitted.

Witnesses in Order of Appearance

6. William Rockwell Griswold—R. 653

Deposition submitted; employee of Sperry Gyroscope; testified that the Washington recorder broke down at 6:19 A.M. November 13th, approximately twenty hours prior to collision.

7. Peter Savitsky—R. 654

Deposition submitted; was aboard a Sun Oil vessel not in the vicinity of the collision but nearby; testified he did not receive a Notice to Mariners concerning Operation Seascape.

8. George S. Hough—R. 655

Deposition submitted.

9. John D. Cain—R. 656

Master of S.S. Washington; testified was asleep at time of collision and was awakened by whistles.

10. Leonel J. Foithier—R. 722

Washington radio operator; testified didn't receive information concerning Seascape; had no orders to listen to hydrographic or Notice to Mariners broadcasts.

11. E. Bradford Tazewell, Jr.—R. 733, 775

Man not a marine architect who prepared exhibits introduced at trial which showed only white lights of naval formation, omitting silhouettes of ships and not showing when side lights would first appear; testified omissions due to lack of space on exhibit; testified exhibit omitted U.S.S. Ruchamkin.

Witnesses in Order of Appearance

12. Oliver Francis Riche—R. 750, 799. Testimony reprinted in full herein.

Second mate aboard Washington on watch at time of collision, and in sole charge of vessel's navigation.

13. Willard B. Gober—R. 857

Engineer of Washington; Coast Guard testimony submitted.

14. Anthony J. Lazarczyk—R. 857

Deposition submitted.

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1. News release dated October 24, 1952, prepared by the Amphibious Force, U. S. Atlantic Fleet, with headquarters at Norfolk, Virginia, disseminated to the Virginia Pilot and the Amphibious Force newspaper. Release gave the time of arrival of vessels of Operation Seascape at Norfolk and time of arrival of the vessels in the assault phase to the beach	29	34
2. News release dated October 26, 1952, dealing with Operation Seascape and disseminated to 137 newspapers and radio stations	30	34
3. News release dated October 29, 1952, dealing with Operation Seascape. Disseminated to 170 newspapers and radio stations and television stations on the Atlantic seaboard	33	34
4. Article published in Norfolk Ledger Dispatch based on the press releases	33	34
5. Paragraph entitled Sea Manners from bulletin from Bureau of Marine Inspection and Navigation, Vol. 4 No. 2, dated August 1939. States imprudent for a single ship to hold its course and pass through a fleet formation; a hazard is caused when one or more ships of the formation is forced to individually change its course or speed for a single ship of any character; comparable negligence to cut through or pass critically close to such a formation		39

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6. Hydrographic bulletin dated October 11, 1939, relative to Sea Manners. Bulletin published weekly and issued to all mariners	47	53
7. Section 106 of DMC 29, published by Chief of Naval Operations, Dept. of Navy, dated June 1953, dealing with Sea Manners. This states that there is danger in a single vessel approaching a squadron of war ships or merchant vessels in convoy. It is a warning to take early measures to keep out of the way of squadrons or convoys	51	53
8. Notice to Mariners, No. 158, dated November 10, 1952, issued by Fifth Coast Guard District. This gives advice concerning the amphibious operations in the vicinity of Camp Pendleton beach area and is a caution not to interfere with Navy operation	56	62
9. Notice to Mariners mailing list maintained by Fifth Coast Guard District, as of May 29, 1947, corrected up to Jan. 12, 1953, showing that The Texas Company is on the list and that copies are sent to New York and Virginia offices of the company	57	62

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	Id. R.	*Ev. R.*
10. Unnumbered HydroLant, date time group 121442Z. This is a radio navigational warning and is notice of the naval exercises and deficiencies in aids to navigation. This HydroLant was for the area offshore from Virginia and referred to day and night fleet operations on November 13, 14 and 17 between Lat. 36° 47′ North and 36° 34′ North and Longitude 74° 30′ West and 75° 30′ West		68
11. Press release dated August 25, 1952, relative to Operation Seascape, issued by Dept. of Defense. Announces the amphibious training exercise		101
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Memorandum by the Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Civil 780, 953, 954, 1203,
1217-1222 inc. and 1230

—o—

THE U.S.S. RUCHAMKIN

and

THE S.S. WASHINGTON.

—o—

The U.S.S. Ruchamkin and the tanker Washington, of The Texas Oil Company, collided in the Atlantic about fifty miles off the coast of Virginia, just below Cape Henry, soon after two o'clock on the morning of November 14, 1952, with resulting loss of life and personal injuries as well as damages to both ships. Throughout the night the weather was fair, the sky clear, and the wind light, with a smooth sea. A fast destroyer escort, the Navy ship was joining from the rear a formation of ten other naval vessels moving westwardly in an amphibious operation aimed at the Virginia shore. The Washington, out of a Gulf port and bound for Philadelphia, was on a northerly heading and had passed through the screen of the formation as it slowed to let her through. Previously hidden from each other by an intervening heavy vessel of the main body, the Ruchamkin and the tanker met as the tanker crossed ahead of, and as the Ruchamkin on the off side and at top speed was overtaking, the intervening ship. The present litigation consists of reciprocal libels between the United States and The Texas Company

for the ship injuries, libels against the Company on the death claims, and the petition of the Texas for exoneration or limitation of liability.

On the preceding evening the flotilla had left Norfolk on a mock amphibious attack Operation Seascape—upon Camp Pendleton, located immediately south of Virginia Beach. The task force consisted of a screen of four vessels in a "bent line" or arc protecting a main body of five heavy ships formed in a circle with a radius of 1000 yards and the flagship in the center. The chord of the screen was a stretch of five or six miles. On this night only four ships were in the screen because the Ruchamkin; though a screen vessel, was away on a sortie to retrieve a shore detachment and to return with them to the formation at midnight.

U.S.S. Fremont was the flagship and guide. In addition to her captain, she carried the Officer in Tactical Command (OTC), in charge of the entire formation. On the extreme left of the screen was the U.S.S. Corry, the Lloyd next, then the Hollis carrying the screen commander as well as her own master, and the O'Hare farthest to the right, all destroyer-type craft. The wing tip ships—the Corry and O'Hare—were stationed 5900 yards from the guide and 75° to each side of her base course line, while the two inner screen vessels were distant 3700 yards from the guide and, respectively, 33° to the right and left of the base course. Around the flagship were the Glynn, directly forward; the Capricornus, nearly abeam to starboard; (the Carter Hall was to have been on the Fremont's starboard quarter but was detained for repairs and never participated in the maneuvers); the San Marcos astern of the flagship; the New Kent on the port quarter; and the Newport News broad on the Fremont's port bow.

The formation steamed almost due east from the Virginia capes. Outbound the Newport News on radar picked

up the Washington to the south, on a northerly course, inshore of the flotilla, and the Newport News almost constantly thereafter maintained a track on her. Originally the Navy unit planned to turn south when about sixty miles at sea, and when opposite "Point Yoke"—Camp Pendleton—to head west for the assault. Before reaching the end of the first leg, however, the OCT discovered that an aircraft carrier group was maneuvering south of him and he, therefore, abandoned his intended course change in that direction; instead, the flotilla switched to due north at 0055. About 0115, the flotilla swung from north to west, 270°T. At 0150 again the course was changed, this time to 257°T. The last alteration was necessary to bring the group into Camp Pendleton—to compensate for the abandoned southward movement. Their speed was 14 knots.

In the meanwhile the Washington, with all regulation lights burning, was on a course of 7½°T. (9° gyro) and a speed of 14½ knots, her presence well known to the flotilla. She had passed the aircraft carriers and now saw more white lights to starboard, both forward and abeam, and some on her port bow. None seemed nearer than five miles. Save for a temporary deviation to port to give ample way to an unidentified southbound ship, she steadily maintained her course and speed.

The combat intelligence center (CIC) of the Fremont had the Washington on her radarscope at a range of thirteen miles just before the flotilla changed from its 270°T. course at 0115. Other ships of the group also held the Washington. The flag did not consider her to be a threat to his formation, for he reckoned that the Washington would pass astern of the group. But when the formation changed to 257°T.—at 0150, twenty-some minutes before the accident—the Washington, then off the Fremont's port bow at a distance of ten miles, was

computed to be on a collision course with the Capricornus, collision predicted at 0209. This solution was thereafter verified at short intervals, and about three minutes later the Washington was bearing 229° T. with a range of 6.7 miles from the Fremont, and next at a range of 3.9 miles, bearing 230° T. About 0202 it appeared she would pass through the center of the formation, her closest point of approach being 1700 yards from the Fremont. This information was published generally throughout the flotilla at a time when the Ruchamkin was in the area. Because of sea return or other interference, after 0202 the Washington was no longer observable on the flagship's radarscope.

At 0205 the formation's speed was reduced from 14 to 8 knots, then to 5 knots at 0207. The Washington had not yet passed through the screen. The purpose of the speed reductions was to let her through. (The clocks of the flotilla were possibly two minutes ahead of the tanker's, but the times here are those of the Navy.) On the Washington, soon after 0200, the second mate having her con saw two red lights almost dead ahead or fine on the starboard bow, "bright" and "close of me and going across my bow". Immediately he ordered the tanker to 23° gyro (21½°T.) from her base course of 9° gyro (7½°T.). The two red lights were undoubtedly the port side lights of the Hollis and the O'Hare (the vessels of the right wing of the screen). When these two red lights were well on the tanker's port bow, she went back to 9° gyro or 7½°T. She had passed between the Hollis and the Lloyd, about a half-mile from the latter, more than a mile from the Hollis, and 1200-1500 yards ahead of the Glynn, the lead-ship of the main body.

Just after he had steadied on 7½°T. and was passing the Capricornus (the main body's starboardmost ship) the mate saw another red light "very close to my starboard

hand, and coming across from my starboard bow to my port bow at a terrific speed." Immediately he gave the tanker hard left rudder and sounded two blasts on her whistle, followed by several short ones. The red light was the Ruchamkin as she sped across the Washington's bow. Within seconds the vessels collided, the Washington's stem ramming the Ruchamkin a bit aft of midships. It was 0213 Washington time, possibly 0215 Ruchamkin's.

Earlier the Ruchamkin had completed her mission and had tailed the formation while it was still steaming eastwardly. About 0138 she reported to the screen commander by voice radio her readiness to join, and in reply was told to wait. At 0140 she reported her arrival to the guide and received acknowledgment at 0155, but her message did not reach the Fremont's bridge until after the collision. She was then on the starboard quarter of the main body, bearing 60°T. from the flagship and 6500 yards distant—she had followed around to the right of the group as it changed courses. No warning of the approach of the Washington was ever specially given to the Ruchamkin by the guide or by any other ship in the formation. Her commander testified that he had not received the reports which the Fremont had been releasing concerning the tanker. Moving with the same speed as the main body, while waiting, the Ruchamkin was next directed by the screen commander to move to a position from which, when ordered, she could assume her station in the screen—immediately to the north and right of the Hollis. The tanker was then preparing to go through the screen—on the other side of the Hollis—her course 7½°T.—then 21½°T.—then 7½°T., the Ruchamkin's 260°T.

For taking position the command to the Ruchamkin was to expedite, i.e., to hurry or move "smartly". With engines rung up to 22 knots, she coursed along the right side of the main body, almost parallel to the formation—a di-

vergence of only 3° and 1000 to 1500 yards from the nearest ship. In effect told to disregard the speed reductions, the Ruchamkin was ordered by the screen to "continue to expedite". She obeyed. Still no special warning was given her of the Washington's presence inside the screen, though she was in plain view of every vessel of the whole flotilla save the Ruchamkin. Indeed, before the Ruchamkin encountered the Washington the formation had been ordered to resume 14 knots, another assurance to the Ruchamkin that all was clear.

The intervening main body—"cargo lights, porthole lights and mast lights, or what you have from this formation"—obscured the Washington and the Ruchamkin from each other. Then on a 260° or 265°T. course and overtaking what she thought was the Carter Hall (not being advised of the latter's absence), but which in fact was the Capricornus, the Ruchamkin noticed that the next vessel, believed to be the Glynn, apparently was closing her. In truth it was the tanker, at a range of not more than 1000 yards. At once the Navy ship went to 270°T., then to 275°T. and then to full right rudder. Only a directional change of 28° was accomplished. She shot across the tanker's bow. Collision followed, within a minute or two from the moment the one observed the other.

Stressing that radar perception does not relax the rigor of the International Rules and insisting that the Washington was throughout the burdened vessel in a crossing situation, the United States lays blame to the tanker, in that, she did not give way to the flotilla as a unit or as separate ships. 33 USCA 104. Conceding the premises the tanker contends, however, and the court agrees, that neither before nor after the tanker entered the screen—the two pivotal stages of the case—did the Washington breach the right hand rule. Indeed, no transgression of any sort was committed by any vessel before the tanker

passed through the screen. The cause of the collision was the Navy's breach of the special circumstances mandates of the Rules while the Washington was in the midst of the flotilla. 33 USCA 112, 121.

I. Assuming, as the Government asserts, that the tanker had been apprised by public notices of the Navy's plans for Seascape, she was not thereby burdened more heavily than to anticipate the appearance of the Navy ships and to avoid unnecessary interference with them. But even if it was the Washington's duty to give way to the formation—if the starboard hand rule accorded precedence to the flotilla as a whole—she had no opportunity to defer. As she stood up the coast, the Washington had passed one naval group, and if she was to expect another, nothing in the later lights revealed the arrival of a second formation. Moreover, initially the flotilla planned to move south on its first turning, and thus the tanker might reasonably have believed she would escape the formation entirely.

The merchantman had before him only a mass of white lights. Well could they have marked a fishing fleet or a number of unassociated freighters. All hands agree that traffic was very thick that night. The lights were all within the customary lanes of coastwise shipping and in the routes of vessels bound for and out of Chesapeake Bay ports. For the last hour the ships of the screen had been repeatedly altering position, as they oriented and reoriented; the main body also, though less radically. These movements aggravated the confusion of the lights. Blinker as well as light signals from the naval vessels were not intelligible to the stranger and she is not blameworthy for having gleaned nothing from them. Consequently, even if it had been the duty of the tanker to go astern of a naval formation, she had no warning she had met one.

Besides, until 0150, only slightly more than twenty minutes before the collision, the Washington was not a

threat to the flotilla; as tracked she would pass astern of the group. At that late hour the guide established a collision course with the tanker by turning the flotilla to 257° T. from 270° T. To be sure, the flotilla was entitled to change course, but this alteration was just another factor rendering avoidance of the flotilla more difficult.

In this connection it must be remembered, too, that the tanker and the flotilla were meeting at less than a right angle. Also, because of the eastwardly receding curve of the southerly end of the screen arc, the tanker was not in a situation involving risk of collision with the flotilla until she was beyond the path of the southernmost ship of the screen, the Corry. Hence the tanker did not have the choice of skirting the flotilla. At all events, neither of the two left wing or southern vessels of the screen (the Corry and the Lloyd) ever tendered collision. When the tanker neared, but before she pierced the screen, both the Corry and the Lloyd, as we have seen, diminished their speed markedly. Their bearing thus did "appreciably change" and risk of collision disappeared. As the Washington's mate said, these ships slid down his starboard hand and dropped astern of him.

Therefore, the tanker in not at once yielding to the flotilla—in not going astern of the Corry or the Lloyd—did not violate the right hand rule. While the OTC's decreases of speed were purposed, commendably enough, to minimize the dangers incident to the meeting those dangers sprang principally from the Navy's desire to maintain a unified formation, a unity which demanded exclusive occupancy of almost twelve square miles of the sea at all times and which had embarrassed the Washington a limine. But having slowed his ships, the OTC intended for the tanker to continue as she did. On glimpsing the red side light of the Hollis to starboard, however, the

Washington immediately righted her wheel—going 7½° T. to 21½° T.—but returned to her original course as soon as the Hollis was away. The tanker did not attempt to pass eastwardly through the formation; the screen commander admitted that he was mistaken in so announcing to the flotilla.

Just as the tanker's behavior before she penetrated the screen was blameless, so for entering it she is not censurable. There was no other way for her. Had she stopped or slowed she would have been enveloped by the flotilla; had she gone astern of the Lloyd, she would have engaged the main body of the formation.

II. Furthermore, the Washington committed no fault of navigation after she moved into the field of the flotilla. When she resumed 7½° T. she was departing the formation, crossing the bow of the outermost heavy ship, the Capricornus, at a range estimated by the OTC as from 500-800 yards and by the watch of the Capricornus at 2000-2500 yards. Already she had cleared the Glynn, the van of the main body, by 1200-1500 yards. At this time the Capricornus was at five knots. (In an answer to interrogatories the Government stated that the Capricornus was a darkened ship from midnight until 0200; but the Government asserts this was an error, and the court so finds.) Obviously the flag considered the Washington safely away as she passed the Capricornus, for he thereupon ordered the whole flotilla to resume its regular 14-knot speed.

The meeting of the Ruchamkin and the Washington was not controlled by the starboard hand rule, for neither vessel could see the other. Lind v. United States, 1946, 2 cir., 156 F. 2d 231, 233. There is no acceptable proof that the tanker could visually have espied the Ruchamkin, or the Ruchamkin the tanker, before the other emerged from the obstruction of the Capricornus. Wholly incredible is the testimony of the tanker's lookout that he discerned

the lights of the Ruchamkin before and just after 0200, reporting them to the bridge each time, and could recognize them as the ship with which the tanker collided. The court cannot find, as does the Government, any corroboration of the lookout in the testimony of the tanker's wheelsman. There is virtual unanimity among all the watch officers that so numerous were the lights that no particular ship was distinguishable. Even the screen commander lost sight of the Washington as her lights merged with the main body's. Nor were they separable on the radarscope. With so many pips on the radarscope, the picture was like "a cluster of grapes" and individual identification almost impossible.

As the Ruchamkin was not in sight, the Washington was not required by Article 28, 33 USCA 113, to give Ruchamkin a whistle signal of the tanker's return to 7½° T. A blast then might incidentally have been helpful or it might have been confusing, but as it was not owed the Ruchamkin, its omission was not fault.

Governing here are the special circumstances rules, Articles 27 and 29, 33 USCA 112, 121. Both vessels exerted themselves to the utmost to avoid collision after their presence was mutually disclosed. From that moment no negligence can be laid to either. Although "right hard rudder" by the Ruchamkin might have saved her, it is doubtful; her master was acting in extremis and he must not be judged too nicely. But earlier neglect of the Navy directly and proximately accounts for the collision.

No explanation is offered why the Ruchamkin did not receive and regard the advice repeatedly given the flotilla both by the OTC and by the screen commander of the tanker's progress; no reason is given why the Ruchamkin was not alert to the danger she might well anticipate from the stranger. In these respects she was negligent. Again, with the tanker proceeding between the Lloyd and

the Hollis and the formation slowing to let her through, the screen commander nevertheless called the Ruchamkin to speed across the bows of the Washington, at the same time misjudging the course of the merchantman. For allowing the Ruchamkin to follow an order so plainly perilous, the OTC, too, was negligent. Though the expediting order established an obvious risk of collision, no effort was made to caution the tanker against the imminent danger. Utterly ineffectual as a signal were the flashing lights sent her from the Fremont. Delayed until the tanker was passing the Carpricornus and designed only to reprimand the Washington for traversing the area, they were focused not from a nearby ship but from the flagship, a vessel encircled by other ships. Light signals that night had not been effective between the members of the naval group themselves—not even the screen commander could be raised by the Ruchamkin by lights.

If a private vessel, the Ruchamkin because of her negligence would be liable in rem, and her owner would be liable in personam, for the damage to the tanker. Hence here the United States must answer on both principles. Public Vessels Act, 46 USCA 781. Ruchamkin is also liable under the in rem principle, and the Government in personam, for the negligence of the commodore and the screen commander. This liability is not fixed by virtue of a military chain of command; it is predicated upon what these officers did or left undone while present and in authority. Moreover, by reason of their authority to direct her moves, they were constructively aboard the Ruchamkin. As we later point out specifically, the Fremont and the Hollis are also liable under the in rem principle, and the United States in personam, for the negligence of the tactical officers respectively aboard them. No other ship in the flotilla is found guilty of tortious conduct.

The court has decided the issue of the in rem liability of the Fremont and Hollis because the Government re-

quested a finding on this head. Each of these two vessels had her own master and the United States urges with much force and logic that, as the mistakes of the tactical officers occurred in their actions as commodore and screen commander, and not in the navigation of the ships they were aboard, these vessels are not chargeable with such negligence. Strong precedent is cited to this point: Publicover v. Alcoa S.S. Co., 1948, 2 cir. 168 F. 2d 672, 678; the Glaucus and City of Florence, 1948, Law Reports (Eng.) Probate Division 95; The Sobieski, 1949, Law Reports (Eng.) Probate Division, C.A. 313. But in all of these cases the commodore's vessel was owned by another than the employer of that officer. Moreover, in each instance he was aboard or acting in that capacity without the invitation or desire of the owner.

On the other hand, instantly the tactical officer was on board at the direction of the owner; the vessel was furnished him by the owner for his tactical duties. There is nothing inequitable in holding the owner, and the ship it provided for him, responsible for the tactical officer's conduct. In United States v. The Australia Star, 1949, 2 cir. 172 F. 2d 472, 476, the Government's escort ship was held liable for failing to give both her escortee and a stranger-vessel warning of the approach of each other. True, there the escort's master and the escort officer were the same person; but, surely, the division of these responsibilities between two officers, instead of vesting them in one, does not destroy the principle. We find no repudiation of The Australia Star evinced in United States v. The Adrastus, 1951, 2 cir. 190 F. 2d 883.

Again, the argument of the Government would vitiate the intent of the Public Vessels Act. Its intendment is to render the United States suable and answerable for a want of care on the part of its authorized personnel in their acts upon its public vessels. Canadian Aviator,

Ltd. v. U. S., 1945, 324 U. S. 215, 224. In the present instance the commodore and the screen commander were certainly lawfully aboard and did, or failed to do, that which was within their authority. In these circumstances the Act considers their conduct to be their ships'. Indeed, they each had the power to control the movements of the very ships that carried them. Under the Public Vessels Act the liability of the United States is traced through the ship, and if the tactical officer's negligence is not to be ascribed to the ship, then any liability of the United States for the negligence of such officers, no matter how grave, would be put in doubt.

Finally, proctors for the Government complain of the court's refusal to direct production before trial by The Texas Company of the statements of four members of the Washington's crew, "especially when the Government's Board of Inquiry testimony had been required to be turned over to The Texas Company" and because this was a "ruling for attorney privilege and against naval privilege". They request the court "for the benefit of the record" to "note the Government's contention." It is so noted, but it is fundamentally in error. Only because the statements were the personal work product of counsel was pre-trial access to this memoranda not allowed; at the trial the Government was unrestricted in its cross-examination of these witnesses; and not the slightest prejudice to the United States was suggested at the hearing. But as to the Government's production before trial, the fact is that nothing was "required" of it. The Court ordered discovery in precisely the terms the Government itself had offered disclosure; no more was ordered than was tendered. Further, its proctors repeatedly disclaimed any privilege—specifically, on June 2, 1954, and again on September 13, 1955.

Adopting this memorandum as its findings of fact and conclusions of law, the court will on presentation enter a decree in each of the death suits and in the limitation proceeding exonerating the Washington and The Texas Company, and will pass a decree in The Texas Company libels fixing liability upon the United States in accordance with the views herein expressed.

(Sgd.) ALBERT V. BRYAN,
United States District Judge.

April 17th, 1956.

Final Decree

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

Civil Action No. 780

UNITED STATES OF AMERICA, owner of the U.S.S. RUCHAMKIN,

Libelant,

v.

S.S. WASHINGTON, her engines, etc., THE TEXAS COMPANY, etc.,

Respondent.

Civil Action No. 1203

In the Matter
of the
Petition of THE TEXAS COMPANY, as owner of the Tanker WASHINGTON for exoneration from or limitation of liability.

Civil Actions Nos. 1217, 1218, 1219, 1220, 1221, 1222 and 1230

EVELYN ECKERT, as Administratrix of the Estate of Edward James Eckert, Jr., Deceased; PARLEY BRIGHT, as Administrator of the Estate of Merton Bright, Deceased; CATHERINE BODE, as Administratrix of the Estate of Ralph J. Bode, Deceased; BARBARA ALLRED, as Administratrix of the Estate of Kenneth V. Allred, Deceased; MARGARET FULWILER, as Administratrix of the Estate of John T. Fulwiler, Deceased; JOSEPH KENNEY, as Administrator of the Estate of Raymond Kenney, Deceased; ROMOLO POMPA, as Administrator of the Estate of Pasquale Pompa, Deceased,

Libelants,

THE TEXAS COMPANY,

Respondent.

Final Decree

The above entitled causes, together with the libel of The Texas Company as owner of the tanker S.S. Washington, against the United States of America as owner of the U.S.S. Ruchamkin (In Admiralty Nos. 953 and 954) having come on to be heard by the court on the pleadings and proofs of the respective parties and claimants, and having been argued and submitted for decision, and due deliberation having been had thereon, and the court having decided that the collision was caused solely by the fault of the United States of America and its agents and employees in charge of the U.S.S. Ruchamkin, the U.S.S. Hollis and the U.S.S. Fremont, and that the said collision was not caused or contributed to by the negligence of The Texas Company, its officers and employees or those in charge of the S.S. Washington, and the court on April 17, 1956 having filed a memorandum setting forth its findings of fact and conclusions of law which memorandum is filed with the papers in the cause entitled, "The Texas Company, owner of the tanker Washington v. The United States of America, owner of the U.S.S. Ruchamkin," In Admiralty Nos. 953 and 954, it is now, on motion of Francis N. Crenshaw, one of the proctors for The Texas Company,

ORDERED, ADJUDGED and DECREED:

1. That the collision and the consequences thereof, described in the libels, cross-libels and petition herein, were caused solely by the fault of the United States of America and its agents and officers in charge of the U.S.S. Ruchamkin, the U.S.S. Hollis and the U.S.S. Fremont.

2. That the collision and the consequences thereof were not caused by any fault or negligence of The Texas Company, its officers or employees or those in charge of the S.S. Washington.

3. That The Texas Company, as owner of the S.S. Washington, is entitled to be and is hereby forever exonerated from any liability, damage or cost arising or resulting from said collision.

4. That the death cases entitled:

Evelyn Eckert, as Administratrix of the Estate of Edward James Eckert, Jr., Deceased. (Civil Action No. 1217)

Parley Bright, as Administrator of the Estate of Merton Bright, Deceased. (Civil Action No. 1218)

Catherine Bode, as Administratrix of the Estate of Ralph J. Bode, Deceased. (Civil Action 1219)

Barbara Allred, as Administratrix of the Estate of Kenneth V. Allred, Deceased. (Civil Action No. 1220)

Margaret Fulwiler, as Administratrix of the Estate of John T. Fulwiler, Deceased. (Civil Action No. 1221)

Joseph Kenney, as Administrator of the Estate of Raymond Kenney, Deceased. (Civil Action No. 1222)

Romola Pompa, as Administrator of the Estate of Pasquale Pompa, Deceased. (Civil Action No. 1230)

should be, and the same are hereby dismissed, and the respondent shall recover its costs as taxed therein. This order is without prejudice to the rights, if any, of the estate of Joseph Kenney under its alleged settlement agreement with The Texas Company.

5. That the libel of the United States of America as owner of the U.S.S. Ruchamkin v. the S.S. Washington, designated Civil Action No. 780, should be and the same is

hereby dismissed, and the claimant-respondent shall recover its costs as taxed therein.

(Sgd.) ALBERT V. BRYAN,
United States District Judge.

Dated at
this 11th day of May, 1956.

A True Copy, Teste:

WALKLEY E. JOHNSON,
Clerk.
By FRANCES E. MUMFORD,
Deputy Clerk.

We ask for this:

s/ BAIRD, WHITE & LANNING,
By FRANCIS N. CRINSHAW,
Proctors for The Texas Company.

No objection as to form:

s/ L. S. PARSONS,
By T. F. McGOVERN,
United States Attorney.

s/ WILLIAM P. WOOLLS, JR.,
Proctor for Death Claimants, Eckert, Bright, Bode, Allred, and Fulwiler.

s/ FREEDMAN, LANDY AND LORRY &
JOHN P. STRAUSS,
Proctors for Death Claimant,
Pasquale Pompa, dec.

[15] Mr. Brush: With the Court's permission, I would like to make this rather brief but I think preliminarily we ought to have some explanation because of the fact that the Navy testimony perhaps or the testimony involving the Navy witnesses frequently is expressed in sort of Navy language or [16] lingo. Sometimes they use letters or things of that character and they will describe a technical maneuver of naval vessels that were involved in this matter.

Now we have here a litigation involving eleven naval vessels and one merchant ship, a tanker. The tanker was what is known as a T2 tanker approximately five hundred twenty-three feet long. She was loaded, and she had left a Gulf port known as Atreco, Texas, several days previous, and was on a voyage to Philadelphia, Pennsylvania. That voyage would take her up along the coast. This collision happened about fifty-five miles off the coast of Virginia, in the vicinity of Cape Henry. It happened 2:15 or 2:13, according to some witnesses; 2:15 Navy time in the morning. The night was clear. There was little, if any, wind. The visibility was good. The Washington was proceeding up, having passed Hatteras earlier in the evening and she was proceeding on a course which some of the witnesses will describe as zero zero nine which is a little to the right of north.

The Navy formation consisted of eleven vessels. The operation plan under which this formation was practicing this maneuver—it was a fairly large-scale maneuver that had been planned several months in advance, and the Navy ships set out from Norfolk the night before, or the evening before, and the plan called for these ships to proceed to sea some fifty or sixty miles or more, and then turn and head back at a [17] particular time in a westerly direction towards the coast, so that the vessel would arrive at a particular point about 4:30 in the morning, at which point

other vessels, Navy vessels carrying troops would meet, and there would be an assault on the beach in the vicinity, a practice assault in the vicinity of Camp Pendleton, Virginia.

* * *

[39] EMERSON HAYES, JR., witness for the government, *direct examination by Mr. McGovern*:

Q. Captain Hayes, have you sailed out of the port of Norfolk and Hampton Roads? A. Yes, I have.

Q. Are you also as part of your regular duties in the Coast Guard familiar with the requirements of the rules of the road, particularly international rules? A. Yes, I am.

Q. Now I am directing your attention to the International Rules which were in effect in 1952, which were for the purpose of this case—we will call it Old International Rules. Now what lights would a fishing would a fishing vessel on the high seas off Cape Henry be showing, if she were fishing under the International Rules as they existed in November, 1952? A. Well, if it was the prevailing type of vessel, a [40] trawler, that would be there, she would show a tricolored lantern on her foremast which would consist of a white light in the center and a green light showing on the starboard side and a red light on the port side and six to twelve feet below that light, she would show an all around white light.

Q. Now what lights would be shown at the same time in the same place by vessels of a normal length as big as a destroyer which were under way and showing the required navigational lights? A. On her foremast she would show a foremast light, which would be a twenty point light showing from two points abaft or port beam all through the range of bearing to two points abaft the starboard beam. She would show on her starboard side a green light that would show from dead ahead from two points abaft the starboard beam and on her port side a red light which would show from dead ahead two points abaft of the port

beam. Then she would also show a stern light which would show six points forward of her stern. In other words, from the two points abaft of beam to dead astern, and cover the rest of area, would be a white light.

Q. Captain, have you navigated with radar? A. Yes, I have.

Q. For what company? A. For United States Lines.

Q. Have you also navigated with radar for the Coast [41] Guard? A. Yes, we have.

* * *

ROBERT E. GORENC, witness for the government, *cross-examination by Mr. Crenshaw*:

[160] Q. Do you think you would have known what was in it at [161] the time? A. Yes.

Q. Did you read the Captain's Night Order Book? A. Yes, I did.

Q. You would have been familiar with what was in that? A. Yes.

Q. As you were proceeding along, did you have a feeling that, or did you know whether you were behind schedule, the Ruchamkin was late in accordance with this delicately planned maneuver? A. I vaguely remember thinking so. I am not sure.

Q. You had that impression? A. Yes.

Mr. Crenshaw: If your Honor please, I wonder if we could take about a five-minute recess. This information was given to us just today and we are having a little difficulty assimilating it.

The Court: Yes. Take a short recess, Mr. Marshal.

(After recess.)

(The witness resumed the witness stand.)

By Mr. Crenshaw:

Q. Mr. Gorenc, during the recess I handed you a paper which has been previously introduced as the Ruchamkin

C.I.C. voice radio log. Now referring to that, would you look at [162] the entry at zero one thirty. Now that entry is from Com Screen to the Ruchamkin, and am I correct in saying that that is an entry directing you—no, reporting—strike that—that is from the Ruchamkin to Com Screen reporting for duty? A. Yes, that is correct.

Q. Now the answer to this message was, Roger Wait; is that correct? A. That is correct.

Q. That meant that action to that would be taken at some later time; is that correct? A. Yes, that's correct.

Q. Now then, we have a message at zero one four nine from the Commander of the Screen to the Ruchamkin. Is that a direction for the Ruchamkin to proceed to its position or what does that say? A. Shall I read it?

Q. Please do. A. Formation has decreased speed to fourteen, and are on Roger two five seven. Expedite formation. C.I.—I can't read the rest of it.

Q. But the word expedite is in there, is it not? A. Yes.

Q. Is that a direction to you to proceed rapidly to your position? [163] A. Yes.

Q. And that is at zero one forty-nine? A. That's correct.

Q. Now then at zero two zero one, one minute after two, there is a message from Com Screen to all screening vessels, execute to follow eight. What does that mean? A. Speed eight knots.

Q. And the execute to follow means? A. That we're going to come to a speed of eight knots at a given time.

Q. Sort of an informational broadcast? A. That's correct.

Q. And then one minute later, which is two entries later, at zero two zero two there is a message from the Screen Commander to the Ruchamkin saying, formation has executed speed eight knots to expedite joining formation. Is that correct? A. Yes, that's correct.

Q. And then one minute later at zero two zero three, we find a message from the O.T.C. to the Commander of the Screen, execute speed eight. A. That's correct.

Q. So that your first expedite came on the zero one four nine, and your second expedite came at zero two zero two? A. Yes, sir.

* * *

[180] Thereupon, CHARLES N. DAY was called as a witness by counsel on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

[181] *Direct examination*:

Mr. McGovern: Your Honor, in order to put on Captain Day, who has read the deposition of the witness, Smith, I should first have to introduce the deposition of the witness, James Smith.

The Clerk: James L. Smith.

Mr. McGovern: James L. Smith.

I understand we are pressed for time and that we don't have to read the deposition into the evidence.

The Court: I do not want you to feel pressed for time. Take such time as you think is necessary. If you do not want to read the depositions, I will read them.

Mr. McGovern: That is what I wanted to know.

The Smith deposition is the one I thought was important. The witness has read it.

(The depositions were filed in open court.)

By Mr. McGovern:

Q. Captain, what is your name and your home address? A. Captain Charles N. Day, U. S. Navy, U. S. Naval Station, Green Cove Springs, Florida.

Q. Now when were you graduated from the Naval Academy? A. 1926, sir.

[182] Q. Were you in command of a naval group, or other organizations which were engaged in Operation Seascape? A. Yes, sir.

Q. Please explain what your command was and how your command was designated and the limitations on your command. A. I was in command of the Task Force operating under Operation Seascape, and on the night in question I was Commanding Officer of the movement element which consisted of a main body of six ships, and a screen of four ships. We were proceeding from Little Creek, where we had held an operations, rehearsal operations in the afternoon to see the afloat phase of this Seascape Operation, and this was the phase preceding the landing assault to be held the next morning.

Q. Now where were you and your staff physically located? A. On the tactical bridge of the Fremont, which is the highest bridge on the Fremont.

Q. What kind of a ship was the Fremont? A. She was an A.P.A., fitted up as a secondary command ship.

Q. Now what was the relations between you as the flag and the Fremont as the ship? A. The ship operated as a unit under my command as all other ships, except that I had the complete tactical [183] control circuit on the tactical bridge.

Q. Did the Fremont continue to have her own commanding officer? A. Yes.

Q. Was he still in command of the ship? A. Yes, sir.

Q. Was he still responsible for the safety of his own ship? A. Yes, sir.

Q. Now how was the C.I.C. of the Fremont? Was that attached to the flag or attached to the ship? A. It was attached to the flag, sir.

Q. Now where were you yourself standing at the time that you first became aware of the ship which later de-

veloped to be the tanker Washington? A. I was on the bridge when my staff officer, Lieutenant Nelson, called my attention to a light that he could just barely make out, and I went over and couldn't see it at first, and then finally picked it up with my eight fifty binoculars, eight power binoculars. We at first couldn't make out what it, what the color of the light was. We finally determined it was green. I then proceeded to give orders to C.I.C. to start tracking this target.

Q. About how far did this green light appear to be when you picked her out with the binoculars? [184] A. From previous experience with an eight power binoculars I judged it to be seven to nine miles.

Q. Now at the time she was sighted, where did she bear from the Fremont? A. I am not sure of the exact bearing right now, but it was, I believe it was on the port bow, a little bit ahead of the beam.

Q. Now was she on the same bearing with respect to the other vessels under your command? A. Some of them may have been in line with the San Marcos. I believe it was over on the port side while we were on two five seven.

Q. Now did you continue to observe the vessel which later turned out to be the tanker Washington? A. Yes, sir; I observed the vessel visually most of the time during her track ahead of the two left ships of the screen, through the screen until she had cleared ahead of the Capricornus. She was visible nearly all that time, and became more visible as she approached into the formation.

Q. Now what course was your formation on at the time you first observed this tanker? A. We were on two five seven, or coming to two five seven. I think we were on two five seven.

Q. Now the course you had been on before you were on two five seven was also a westerly— [185] A. Two seven 0.

Q. Had you been on two seven 0 long; more than five minutes? A. We came to two five seven, I believe at zero one five zero. And I believe we came to two seven zero at about zero one one five.

Q. Now what reports, if any, did you receive from your C.I.C. with reference to this vessel which you could see visually yourself? A. Shortly after I had sighted the light and made sure it was a red—a green running light, we, I ordered C.I.C. to start a track. And shortly afterward, I would imagine two or three minutes, we got a report, collision on the Capricornus at zero two 0 nine, I believe it was.

Q. That was a prediction now. Did you continue? A. That was the initial report that I got from C.I.C.

Shortly afterwards, I would say two or three minutes, we got the report that the tanker, or the crossing ship, would clear that the screen, and that the C.P.A., I think, would be at three twelve, seventeen hundred yards from the guide.

Q. What, if anything, did you do with respect to this stranger vessel which was coming into your formation from your port hand? A. Well, at least, I was very apprehensive. The ship [186] presenting its green running light, as it had, and apparently in a crossing situation, kept my undivided attention. As we say in the Navy, sweated it out. I thought that the crossing ship would turn, stop, or do something to avoid crossing ahead. I repeatedly asked C.I.C. to keep me advised of the track which they did. Also my watch officer and I and my chief staff officer could observe the crossing ship from its running lights. Its running lights became visible as it approached toward the left-hand ship of the screen. It did not change even after it had passed the left-hand ship of the screen.

I thought it would still take avoiding action, but it kept crossing ahead of the screen. During this time I was also

advised by my junior watch officer, Ensign Gilliland, who was running a grease pencil track on his remote, or repeater scope on the tactical bridge; I was being kept advised of him, of the TAC, his track there locally agreed with the transmitted track, the information that I got over the inter-communications system.

Besides all of this, why, you could actually see the ship; or its lights, as it progressed ahead of the two screen ships through the screen and most certainly as it passed ahead of the main body and ahead of the last, or ship nearest to the track, the Capricornus.

Q. At what point did you decide that the vessel was [187] not going to turn away and you would have to take avoiding action? A. That is hard to say. My intentions, as the track continued, was to take avoiding action after the ship had passed the screen. I think—I knew my main body was more vulnerable and, of course, at that time I had no way of knowing what this ship's intentions were. They might have turned right into my main body.

Q. Go ahead. A. The ship did continue on its track. In radar, as we noted it and the reported track, we detected no change of course on the part of the crossing ship. After the ship had actually passed through the screen, it was between the main body and the screen, and I verified this by C.I.C., by our local, remote, repeater, radar scope and by visual on the binoculars, both by me, my staff, duty officer and my chief staff officer. After she had passed the screen I took what I considered extremist action and slowed speed, I believe at about two 0 four, to eight knots and less than a minute later, feeling that I had not taken sufficient action, I slowed to five knots.

Q. Was this action successful? Did it— A. Yes, sir; as far as I know all ships answered, and we did clear, I judged, that we were cleared the Capricornus by five to eight hundred yards; and I considered it necessary [188] as an avoiding action.

Q. Now when did you first hear of the Ruchamkin?

The Court: Just a minute, Captain. You say you cleared the Capricornus by how much?

The Witness: I judged by binoculars and C.I.C. reported to me by about five to eight hundred yards, sir.

The Court: That is a distance between what two ships?

The Witness: That would be between the Washington, as she passed ahead of the Capricornus and the Capricornus bearing over on my starboard bow.

The Court: You meant you cleared the Capricornus and the tanker by that much; not your ship?

The Witness: Yes, sir. No, sir.

By Mr. McGovern:

Q. Thank you.

When was the first notice which you personally had of the Ruchamkin?

The Court: Before you start on that phase of it, suppose we take a break.

Take a short recess, Mr. Marshal.

(After Recess.)

[189] (The witness resumed the witness stand.)

By Mr. McGovern:

Q. Captain, did you have any signal men on the Fremont challenge the tanker as she went by? A. Yes, sir; after the crossing ship had passed ahead of the Capricornus about two or three minutes later, I ordered that

the unknown ship be identified by signal. She was signaled to and I got the report that there was no answer.

Mr. McGovern: I would like to offer the depositions of the witnesses, Jere and Blackman, who are the signalmen who did the challenging. Their testimony was taken July, 1954, by Mrs. Wilson—I am sorry—by Dorothy Ledet.

(The depositions were filed in open court.)

By Mr. McGovern:

Q. Now, Captain, had you seen or had you received from your C.I.C. any report as to the location of the Ruchamkin at the time that this stranger vessel went through your formation and went in front of you? A. No, sir.

Q. Had you requested your C.I.C. to get you a range and bearing on the Ruchamkin previous to this? A. My memory is that I had, sir.

* * *

Cross-examination by Mr. Crenshaw:

[202] Q. Now this particular night, the screen commander was active in keeping his screen position ahead of you, and did you have to delay your orders or because of the slowness of the screen, or were they prompt in carrying out their orders? A. I think everything was normal, sir.

Q. Everything was normal. Now, Captain, the Operations order, as I understand, call for your sailing from Norfolk on a generally easterly course for a time, then turning to the south, and then turning to the beach: is that correct? A. Yes, sir. Those were the intentions.

Q. Those were the intentions. Now those intentions were expressed by you in your night orders, were they not? A. Yes, sir.

Q. They were, however, not carried out, were they? A. They were not. It was not possible to carry them out, sir.

Q. Why, Captain, was it not possible to carry them out as planned? A. The first part of the evening, in proceeding to the east, we had a squadron of ships, another Operation, naval Operation to the southward of us and they were in an overtaking position to the south of us, but it took quite a long time [203] for them to pass us, and we were delayed by this particular formation. I did slow down to let them overtake, so that I could make my change to the south and about that time we had targets on the starboard bow again, and we were in no favorable position to turn south then, and we were clear to the north. So I turned north after delay of about fifty-five minutes. I believe:

Q. Now the turn to the north was about fifty-five minutes after midnight, was it not? A. Zero zero fifty-five, yes, sir.

Q. Then you turned west again, or you turned west to two seven o? A. Yes, sir.

Q. That time was approximately fifteen minutes after one, was it; about twenty minutes later? A. Yes, sir.

Q. Now what was the purpose of holding that northwardly course, that length of time? A. Well, I wanted to change as soon as I could after I got on a northerly course, and we did, as you mentioned before, have the period there of orientation of the axis. They were given a preliminary order regarding the change to the west, and it took them five or six minutes, I guess, to get oriented and report.

Q. So that you stayed on a northwardly course until [204] your screen had settled down into the new positions? A. That's right.

Q. Then your turn to the west— A. That's right.

Charles N. Day—for Government—Cross

Q. After you turned to the west, you had to go through the same sort of procedure; the screen had to resettle again; is that correct? A. Yes, sir.

Q. Now then, I understand— A. No, sir. No, sir, the change from north to west, the screen oriented while the main body was on a northerly course, oriented to the new formation course during this period that we were going north.

Q. So it's your understanding that the screen was already oriented to the new course at the time you changed from north to west? A. Approximately so; yes, sir.

Q. That is your understanding? A. Yes, sir.

Q. Have you any idea, Captain Day, how long it would take your screen to reorient? A. We talked that over before the formation, and the screen commander wanted ten minutes, sir. I believe he could do it in five minutes in an emergency.

Q. Captain Day, did he want ten minutes to reorient [or [205] did he want ten minutes advance notice of the course change so that he could tell his screening officers that he was going to have to reorient and so they could work out their maneuvering board solutions and be ready to reorient? A. No, I think it was to include both the preliminary notice and getting—

* * *

[206] Q. Now then there came a time after the change from north to west, that you changed course of this formation from two seven 0 which would be due west, thirteen degrees to the left, to a course of two five seven? A. That's right, sir.

Q. I might add that you, I understand, that you changed speed about one thirty-four from twelve to fourteen knots; is that correct? A. From ten I believe.

Q. What, sir? A. I believe I had the speed ten going north, if I am not mistaken.

Charles N. Day—for Government—Cross

Q. Was it ten or was it twelve, or do you recall? A. I recall it is ten, sir. I am not sure.

Q. All right, sir. Then you changed course at about ten minutes of two from two seven 0 to two five seven? A. Navigational course to Camp Pendleton.

Q. That course of two five seven was designed to take you to where? A. Camp Pendleton, sir, where the assault area landing—

Q. Is there a Point Yoke that was mentioned in your Operation order? A. Yes, sir; I believe there was.

Q. Now was that a point off Camp, the beach at Camp [207] Pendleton to which you were actually headed? A. I believe it was. I can't—

* * *

[228] Q. Now, Captain Day, your C.I.C. being the C.I.C. for the flagship, would it have any control over these radar contacts or the dissemination of information pertaining to [229] those contacts A. Yes, sir; that is standard procedure to keep your ships and your formations informed of raid designations, the letter designations, and keep them informed of any alerts or any warnings as well as to keep the O.T.C. or the tactical bridge informed of such things.

Q. Then your C.I.C. would inform you of the contacts and would inform the other ships of contacts? A. That is my understanding of the way it works, sir.

Q. And it was performing that function on this particular night? A. I think it was, sir.

Q. And all of the vessels in the formation would know it would be doing that, would they not? A. That is the normal procedure; yes, sir.

Q. They would expect the O.T.C. to broadcast solutions or information concerning contacts over that circuit? A. Yes, sir.

Q. Now, Captain Day, do you have any recollection of a solution on the contact that developed to be the Wash-

ington to the effect that it was anticipated that the closest point of approach would be collision with the formation? A. No, sir. The first report that came to me on the bridge shortly after I set them onto this particular target, radar target, was collision course on the Capricornus at, I [230] believe, zero two 0-nine. That is the first report that I got, sir. Very shortly after they started tracking.

Q. That commencement of tracking was about the time you changed course to two five seven, was it not? A. I think we were on the course, sir.

Q. That would be what time with relation to one fifty which is when I understand you changed to two five seven? A. That's right. It may have been at the same time or just a little bit before, sir. We had been looking at the light before I started them tracking, sir.

Q. Uh-huh. And it was about that time, about one fifty then that you had this awareness that this contact, anticipated point of approach to your formation was collision Capricornus? A. I would say two or three minutes after I had started them tracking, sir.

Q. That was about one fifty or thereabouts? A. One fifty-three, something like that, sir.

Q. Now, Captain Day, did that solution change? A. Yes, sir. I, as the Commander, would not rely on one solution. I most certainly wanted them to keep tracking and to get a standard, steady solution which I did.

Q. Did it change before your speed reduction? A. Oh, yes, sir. Yes, sir.

Q. You don't think your speed reduction had much effect on it then, do you, or do you? [231] A. I think the speed reduction was made as a result of knowing where the crossing vessel was going, at least, knowing the approximate track by radar. Most certainly I had to wait until the ship got through the screen before I could take my extremist action.

Q. So that you couldn't give any instructions to your formation until after the vessel had cleared the screen? A. That is it. That was my judgment on it. Yes, sir.

Q. You are sure that you didn't do that, or attempt to do that until after she got inside the screen? A. No, sir; the ship, the Washington, was well inside the screen before I reduced. That is by visual and by radar; both.

Q. Captain Day, do you know how far away the Washington was at two minutes after two on this particular morning? I am speaking of from the Fremont. A. No, sir; I don't. I don't believe—I can't recollect it here.

Q. Do you have any recollection of a maneuvering board plot, or presentation which was introduced at the Coast Guard hearing and which has been attached to the Government's Answers to Interrogatories in this case concerning that position? A. Yes, sir; I do. I believe that was the moving, the relative movement chart prepared by Commander Whiting.

[232] Q. That was prepared by Commander Whiting, who was the chief staff officer on your staff? A. Yes, he was the chief staff officer and with me on the tactical bridge.

Q. Now would you look at that chart, please, sir, and tell me what the range and the bearing was of the Washington from the Fremont at two minutes after two, according to that chart, that plot? A. I believe it is about two three five and it shows here about four thousand yards. I can't see the screen here.

Q. The screen wasn't placed on this, but that plot is outside of this dotted circle by this number four, almost to the next dot? A. Yes, sir.

Q. Now what would that make that range? A. This being, if this is a thousand yard scale, that would be one, two, three, four.

Q. And so some few hundred yards beyond that? A. Yes, sir.

Q. About forty-three hundred yards, would you say? A. Forty-two, forty-three hundred on that particular diagram, sir.

Q. Captain Day, do you remember the position of your screening vessels, their locations? A. Not by exact degrees. I know that the two center [233] screen ships were about thirty-three degrees on each side of the course line, and they were about thirty-seven hundred yards distance from the guide and the two destroyers on the end were about fifty-nine hundred yards, I believe.

Q. Then at two minutes after two, your plot on the Washington then would place it some six or seven hundred yards outside the screen, the thirty-seven hundred yard circle? A. If that is it; yes, this plot that you show me; yes, sir.

Q. Now, Captain Day, when did you attempt first to transmit your message about slowing to eight knots? A. As I remember the order went out about zero two 0 five, sir.

Q. Did it go out more or less instantaneously? A. Yes, sir; it was an execute immediate signal.

Q. And there was no delay about it? A. No, sir. The Washington at that time was well within the screen and that's between the screen and the main body and could be readily seen visually as being there, sir. This was also specifically reported and as inside the screen by C.I.C. and by my, by the ensign on the bridge, who was Ensign Gilliland, who was making the grease pencil plot.

Q. What person in C.I.C. informed you of the position of the Washington inside the screen at this time? A. I couldn't say. It comes over the voice communication [234] system, ship's communication system, and in turn would be transmitted to me from the communication room on the tactical bridge.

[237] Q. Now all of this time, you were talking about privilege; [238] burden, responsibility, as between the Washington and your formation; that is the way you viewed it, was it not, Captain? A. Yes, sir; as between the Washington, my formation and each individual ship in which she violated the rules of the road and crossed ahead of.

Q. Now you speak of this privilege situation, doesn't the rule to which you have referred as the starboard hand rule require you to maintain course and speed? A. It does; yes, sir, except in the extremest condition where you know your ships are in danger.

Q. Now under your concept of that, you had felt then that the situation had gotten to a point where you could not avoid collision, or the risk of collision except by failing to hold course and speed, by doing something else; is that correct? A. Yes, sir; I considered my change of course about the safest solution once—

Q. You mean your change of speed? A. Change of speed once the Washington had crossed through the screen. The screen was pretty far apart. The ships were two miles apart or so. And there was, as you saw, the track coming down, you could see there was a chance of coming through without endangering the screen too much. They are highly maneuverable ships. They are all on their own, have their own commands, responsibilities, but this main body [239] with a thousand yards radius was a group of, it was a different situation, and I felt that this crossing ship could be more readily avoided if I slowed. I did consider it extremest action.

* * *

[244] Q. And did he not tell you at that time that the Ruchamkin would take station three? A. I do not recollect it right now, sir.

Mr. Crenshaw: I must apologize to the Court for these delays.

The Court: Suppose we take a short recess, Mr. Marshal.

(After recess.)

(The witness resumed the witness stand.)

By Mr. Crenshaw:

Q. Captain Day, have you had an opportunity to read over your testimony before the Court of Inquiry? A. Yes, sir. Yes.

Q. Have you had an opportunity to read over any of the others like Captain Persons' testimony? A. No, sir.

Q. Captain Persons, before the Court of Inquiry, on page twenty, I believe it is, testified as follows:

> "At some time between zero one forty-four, thereabouts, Ruchamkin reported for duty. At that time she was bearing zero eight four true from Hollis in station one distance nine thousand yards. I told Ruchamkin to close formation and be prepared to take her station in the screen when so directed. I also told Ruchamkin to [245] expedite closing. I informed O.T.C. that Ruchamkin was proceeding to close the screen and that I would tell her to take station, that I would order a five-ship screen and place Ruchamkin's station when she had closed. He asked me for a bearing of Ruchamkin from him and I gave it. I believe, as approximately zero six five true from him. The exact range I cannot recall, but it was something like sixty-five hundred yards from the guide Fremont, my estimate."

Now do you recall receiving that information from the screen commander? "I informed O.T.C. that Ruchamkin

was proceeding to close the screen"? A. Yes, sir; I don't. I recollect a message which said that they intended to form a five-ship screen, sir. That's my recollection.

Q. Now, Captain Day, if you had received this message, did you have or some of your flag officers have a plot of your formation so that the position of the Ruchamkin could be ascertained approximately from that message? A. Yes, sir; I would say we could plot it.

Q. You could plot it and if you had plotted it, would it not show that the Ruchamkin was somewhere off your stern or starboard quarter? [246] A. Yes, sir.

* * *

[250] Q. Did you not also state that you had had to slow down during the middle of the night to try to let that group [251] to the south draw past you? A. Yes, sir; we did.

Q. Would it be fair to say you were a little bit behind your timetable about two o'clock? A. Yes, sir, but we still intended turning at twenty-four hundred.

Q. Now I know that you had issued a change of speed at ten minutes past two, resumption to fourteen knots from five? A. Yes, sir.

Q. Now what was your purpose then in ordering that speed change? A. It was to better my time back to the assault area.

Q. You were anxious to get on with the maneuver? A. That's right, sir.

Q. Now, Captain Day, were any of your vessels operating under darkened ship instructions? A. No, sir; we had had it be prepared to darken ships, in the instructions, in the Operation order. That is a normal procedure. But at no time were the ships at darkened ship. All of them had all their running lights at all times and ships lighting, all of the ships, lighting of all ships was on also.

Q. In other words, there would be some lighting in the hall or compartment spaces? A. That's right, through the eye ports, deck ports, and [252] whatnot.

* * *

HENRY STAMFORD PERSONS, witness for the government, *direct examination by Mr. McGovern:*

[275] Q. Now had additional directions been given to the Ruchamkin by you at the time of the collision? A. None had been executed.

Q. Now, sir, getting back to the facts of the collision, when did you first, you yourself, first become aware of the presence of the vessel which later turned out to be the tanker Washington? A. The first time that I remember was after completing the reorientation of the screen when the formation changed course to two five seven. That would have been somewhere around one fifty. I had remembered that there were lights on both bows but the Washington had not come to my attention as any particular ship in the crossing situation up until that time.

Q. At that time how did she come to your attention and what did you see? A. She was the nearest ship on the port bow, and I looked at her through binoculars and saw a green side light as well as the two white running lights, and she appeared to be on a crossing course.

Q. Now on what ship were you at this time? A. I was in the Hollis.

[276] Q. What part of the Hollis? A. On the bridge of the Hollis.

Q. How did you obtain any reports from the radar room of the Hollis? A. I requested a report to include the closest point of approach of the contact and I was told to wait, that our recent change of course, when we were reoriented, the screen required that they replot the situation.

Q. Did you wait? A. I waited, and then before I got a report I saw the Washington change course to the right, so

that I saw both her side lights and then I saw only the red side light together with, of course, the two white running lights.

Q. About what time was this with relation to the time that you first saw the Washington? A. Oh, some five or six minutes later, perhaps one fifty-six.

Q. What, if anything, did you do upon seeing the Washington make an apparent change of course to her own right? A. I notified the O.T.C. over the secondary tactical circuit that the vessel on the port bow had changed course radically to the right and would pass through the formation on approximately a reciprocal course. That message, of course, was addressed to the O.T.C. but it was on a circuit that all ships were up on so it constituted a general warning signal.

[277] Q. Now what happened next with respect to this contact? A. Do you mean what the contact did?

Q. That's right. A. The contact passed between Lloyd and Hollis. In other words, about through the center of the screen, and then passed ahead of Capricornus, which was in the northwest corner of the main body. I don't know the distance. Passed ahead of Capricornus.

Q. Did you keep the contact under observation during this time? A. I did as long as possible.

Q. Now what were the possibles? A. Well, on radar I was using the P.P.I. on the bridge, radar, the Washington passed in the blind spot of our radar, that is, the shadow caused by the mast, when it reached a cone astern of the ship, that is some degrees on either side of the ship's stern, visually I had lost the Washington's lights against the lights of the main body. In other words, the Washington's side lights and masthead lights merged with the lights of the main body and I could not see which was the Washington.

Q. When did you next gain observation of the Washington? A. When she came clear of the main body some minute or minute and a half before the collision.

Q. Had you been asking your radar for a plot on her [278] during this time that you had lost her? A. I did not ask them for a plot because I could see on the P.P.I. they did not hold her.

Q. Now what was the apparent course of the tanker when she next appeared after clearing the main body? A. At best estimate I could make she'd changed course some, well, it appeared to me, considerable amount to the port.

Q. To her own left? A. To her left. To approximately the course that she was on when I first sighted her.

Q. Now could you see the Ruchamkin at this time? A. Yes.

Q. Where was the Ruchamkin at this time? A. Ruchamkin was coming up clear of the starboard side of the formation, and my best estimate is that she was on a track that would, so that she would pass some two thousand to twenty-five hundred yards outside of the formation.

Q. Now what was her apparent track with reference to the tanker? A. The last plot—I should not—excuse me, I should not say the last plot. The last information I had from C.I.C. was as the tanker was going down through the screen and ahead of the main body, was that the tanker would pass clear of the Ruchamkin, astern.

Q. Clear astern of the Ruchamkin? [279] A. Clear astern of the Ruchamkin.

Q. What was the name of the officers in C.I.C. who gave you that—

The Court: Just a minute. Tell me that again, Admiral.

The Witness: As the Washington was passing down ahead of the main body, having passed through the screen, they naturally were plotting in C.I.C., and I checked with C.I.C., and they told me that Washington would pass astern, clear astern of the

Ruchamkin. There was no distance involved, but from a check later, based on the changes of course that the Washington made, it must have been at least eight hundred yards she passed clear astern.

The Court: Thank you, sir.

The Witness: You asked a question I think.

Mr. McGovern: I think so.

Your witness.

The Court: What was the approximate course of the Ruchamkin at that time?

The Witness: A rough guess, sir, would be two seven zero, the course.

The Court: Two seven zero?

The Witness: The course that the formation had been on, she was slightly diverging from the [280] formation course.

* * *

Cross-examination by Mr. Crenshaw:

[297] Q. At something approximately zero zero forty when the main body was in formation axis two ten true, the signal was given to reorient—pardon me—it is signal was given to change course, formation to north zero zero true. I then directed the screen to change screen axis to zero zero true. After the signal was executed, the next signal that was given was to change formation course to two seven o true. I gave signal to reorient screen axis to that same bearing, two seven o true, shortly before zero one four five. The formation then was on course two seven o. The screen axis was two seven o true. The axis of the main body formation was two ten true and speed fourteen knots. At some time between zero one forty or thereabouts, Ruchamkin reported for duty. At that time she was bearing zero eight four degrees true from Hollis in station one, nine thousand yards. Is that correct, sir? A. I assume so. I know that there was at some time about then.

Q. Your recollection at the time you gave this testimony was much better than it is today? A. I believe so.

[298] Q. (Continuing) I told Ruchamkin to close formation and be prepared to take her station in the screen when so directed. I also told Ruchamkin to expedite closing. I informed O.T.C. that Ruchamkin was proceeding to close the screen and that I would tell her to take station and that I would order a five-ship screen and place Ruchamkin in station when she had closed. He asked me for the bearing of Ruchamkin from him, and I gave it, I believe, as approximately zero six five true from him. The exact range I cannot recall. But it was something like that. Sixty-five hundred yards from the guide Fremont, my estimate. Now that is a correct statement of the sequence as near as you can recall, is it not? A. As near as I can recall; yes.

Q. Therefore, the range and bearing of the Ruchamkin at zero one—excuse me, at some time between zero one forty or thereabouts was zero eight four true and nine thousand yards? A. Yes.

Q. Now at that time— A. From the Hollis.

* * *

[315] Q. Let me ask you this. What we have tried to do by this diagram is to show in general what the screening ships would have to do. In other words, the O'Hare would have to speed up and go to the right of the course line; the Hollis would have to go a little to the left of the course line; the Lloyd would go quite a bit to the left of the course line, and the Corry would go way to the left of the course line, and slow down. Now are those general statements more or less [316] correct? A. The general statements are more or less correct. I do not like the track, for example, of the Corry because what time were you executing for the Corry now?

Q. We executed upon one-forty. I don't have the time on her. A. This is a ninety degree change.

Q. But it was the time at which her logbook indicated she did execute that signal. A. You did?

Q. Yes. A. Because the point is, of course, we have emphasized before that the reorientation order by me was executed usually some five to seven to eight minutes before the main body changed course, and the time of that would make the tracks different.

Q. So that your difficulty with that diagram is the precise courses and speeds; it depicts more than the general plan that it depicts? A. The precise courses and speeds and times in connection with the Corry would change the picture completely. I mean any variations in those could change that sharp elbow you have in there very definitely. The others, I believe, are generally correct.

* * *

[322] Q. Would it be helpful to show you the radar plot which [323] was taken from the Fremont and put a maneuvering board back under that to reorient? Would that help you in your estimate? A. Possibly.

Q. Now, Admiral, I show you what has been introduced in the Coast Guard as Exhibit 22, which purports to be a radar plot, or a reconstruction of the radar plot from the U.S.S. Fremont. It shows positions or plots of the Washington from one five o, one two four five, and two o two. It does not show the position of the screen because at that stage of the proceedings those positions were treated as classified. With the aid of that and the maneuvering board which you have in front of you and that tracing, could you show us where you think the Washington was when you sent this message that she had changed course to the right radically? A. Well, I can try. Realize, of course, this is a planned view and I was looking at—here I would have to do a little estimating. I sighted her over here about—just before that—some eight thousand yards away. (Plotted.) I would say she is right about there.

Q. You placed— A. That is approximately.

Q. You have placed a dot with a W by it? A. With a circle around it.

Q. Admiral Persons, if the Washington at that moment had, as you supposed, changed her course to the right so as to [324] be on an approximate reciprocal of the formation's course, could you indicate to us by a green dotted line what you would expect her relative movement to be? A. Allowing for a transfer it would be approximately like so. (Drew on the paper.) Well, no, I had to bring that over some. I am sorry. It would have been approximately through the Lloyd.

* * *

[334] Q. On the radar it appeared that the Hollis, was coming [335] very close to those ships in the northeast section of the formation, the Capricornus, and possibly to the Glynn, as it neared the main body, the vessel merged with the navigation lights and other lights of the vessels of the main body and shortly thereafter went into the blind spot of my radar. Is that correct? A. That is correct.

Q. At some time approximating two ten the O.T.C. increased formation speed to fourteen knots, and although I could not be certain it appeared that the vessel cleared the main body. I still did not have it on P.P.I. That is correct? A. That is correct. I did not have it on P.P.I., did not have it clearly visually.

Q. I turned around and checked the PIP's on both bows and then turned back to this vessel. Shortly thereafter it came out past lights of the main body and it appeared to have changed course to the left and was heading in the vicinity of the Ruchamkin. I picked up the microphone for the primary screen circuits to call Ruchamkin and then realized the vessel was so close to the Ruchamkin that anything I told them would serve only to distract

them, and not to help them. The Commanding Officer of the Hollis and I standing side by side watched it through binoculars and I asked him if he thought it would pass clear. He said I believe Ruchamkin had passed [336] ahead. Shortly thereafter about a minute to a minute and fifteen seconds after I picked up the headset for Ruchamkin, I got over the screen primary, "I have been rammed I am sinking Please help me." Now that is a correct statement, nearest of your knowledge? A. To the best of my knowledge, yes.

Q. First as to the statement that you—the Washington became merged in the navigation and other lights of the formation. Could you tell me very briefly what those other lights were? A. The lights that are normally around any ship at sea not darkened or out of portholes and so on. The lights such as Washignton showed out of portholes.

Q. So that there were a number of lights, each one of these ships? A. That's correct.

Q. Quite a glow of illumination? A. I wouldn't say glow, but there was a background of lights.

Q. Against that background of lights you lost the Washington when she was between you and those lots of lights? A. That is correct.

Q. You also lost the Washington as she came through [337] your blind spot of the radar? A. That is correct.

Q. Now as she came out near the Capricornus about two ten, you didn't have it on your P.P.I. scope, did you? A. No.

Q. As I recall your direct testimony you didn't inquire of C.I.C. as to where she was because you knew they didn't hold her, because you didn't see her? A. That's correct, same radar.

Q. There is nothing in this testimony that mentions any solution from your C.I.C. that this vessel was going to pass

astern of the Ruchamkin? A. If you will refer to the cross-examination where I cross-examined Lieutenant Slabey, later on in there I believe you will find that is brought out.

Q. Now how long would it have taken you to call the Ruchamkin and say, Did you see the stranger? A. Well, it depends. If I waited for an answer and had somebody come over to pick up the microphone, it might have been fifteen, twenty seconds, but it might have diverted them just at the time.

Q. How long would it have taken you to get that message out when you held that mike in your hand, the microphone in your hand? A. Probably ten, fifteen, twenty seconds.

* * *

[340] Q. Was that introduced into the Coast Guard testimony, do you know? A. To the best of my knowledge, it was.

Q. I show you here Exhibit 23 which was produced, which was produced as an exhibit before that and ask you is that the sketch taken from the models as you placed them? A. Since my signature is on it, I presume it is.

Mr. Crenshaw: I would like to introduce that.

Mr. McGovern: No objection.

The Clerk: Texas Defendant's No. 6.

(The Clerk so marked the sketch as Texas Defendant's Exhibit No. 6 in evidence.)

The Court: Let it be admitted.

Mr. McGovern: They have an exhibit before that which has not been offered yet.

Mr. Crenshaw: That is correct. That is all, sir.

The Court: Mr. McGovern, is there any redirect examination?

Mr. McGovern: No, your Honor.

Charles T. Ryan—for Government—Direct

The Court: Let Admiral Persons stand down.

(The witness stepped down.)

Mr. McGovern: May this witness be released, your Honor?

The Court: Let him be released from the subpoena.

Thereupon, CHARLES T. RYAN was called as a witness by counsel on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. McGovern:

Q. Your name is Charles Ryan? A. Yes, sir.

Q. Where are you presently employed? A. D-a-n-n-e-m-o-r-a. Dannemora State Hospital, Dannemora, New York.

Q. In what capacity? A. I am a criminal hospital attendant.

Q. You have to get back there tomorrow? A. Yes, sir; I do.

Q. Were you a signalman on the U.S.S. Ruchamkin on the evening when she had a collision wtih a tanker? A. Yes, sir; I was.

Q. Did you attempt before that collision to send a signal announcing your arrival to the officers in Tactical Commaind? A. Yes, sir; I sent a signal.

* * *

[383] Thereupon, A. C. JACKSON was called as a witness by counsel on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. McGovern:

Q. Captain Jackson, where were you born? A. Fayette-

A. C. Jackson—for Government—Direct

Q. Where did you go to school? A. I went to the Robert E. Lee Grammar School. I went to the Lincoln County Central High School in Fayetteville. I went to Tennessee State College, Murfreesboro, Tennessee.

Q. Where did you first join the Navy? A. In Macon, Georgia.

Q. What date, year? [384] A. To the best of my memory it was the 21st of May, 1941.

* * *

[386] Q. Were you the Commanding Officer of the U.S.S. Ruchamkin when she had a collision? A. I was.

Q. With the tanker?

I show you a diagram marked—

The Clerk: No. 16 for identification.
The Court: What is your present rank?
The Witness: Lieutenant Commander, sir.

By Mr. McGovern:

Q. No. 16 for identification, and ask you what it is. A. This is a schematic diagram of the bridge of the U.S.S. Ruchamkin.

* * *

[389] Q. Where did you find the formation? [390] A. Well, after I had passed this—I don't remember the exact time, but after I had passed, after I left the beach—well, we could see the formation on radar, and I proceeded to carry out my instructions and I followed them on out and I approached the formation and was awaiting them to make certain maneuvers they had to make before I could join.

Q. Which way did you approach the formation, from the front, the rear or the side? A. Well, they were going east. I was also going east. I was following at that time.

Q. I see. How long did you remain behind the formation? A. Until after they had turned.

Q. Now how far behind were you at this time, if you remember? A. Well, I was various distances behind them, ranging anywhere from about nineteen to twenty miles on up until I was within a mile of them or less. Considerably less, as a matter of fact.

Q. Now have you read the testimony of Mr. Hirshman, your radar operator? A. Yes, sir.

Q. Now do you recall in his testimony he spoke of a radar contact which he was told to scrub? Do you remember that? [391] A. I do, sir.

* * *

[394] Q. Well, now, we are interested in the situation during the approach. Now in your own way, taking as much time as you want, will you go through the approach from the time that you reported that you were ready to join up to the time of the collision? [395] A. May I refer to my—

Q. No, not yet. A. Well, I don't—if I may say so, that's been approximately two years and eight months. I will do the best I can.

I won't try to give any exact times.

Q. That's right. A. The first, when I had taken it up to where they had brought themselves around on the, to the course two five seven, and we had followed them around, the O'Hare—the man that was in the U.S.S. O'Hare was in the screen. He was in the extreme starboard end of the screen, and when we started around, well, I realized that he had the furtherest distance to go of any of the screen ships, and I had a problem of not embarrassing him or not embarrassing the heavy ships and still fetching up where I should be. So I followed various courses and speeds around the formation until I steadied up on about the same course that we were. I

had used particular pains to keep him about anywhere from ten to fifteen to twenty degrees on my starboard bow. And at the same time keeping a close watch on the ships on the other side that I didn't embarrass any of the heavy ships.

And like I say, we reported that we were ready to join. If I remember correctly, the answer I got to that was a "wait," which I interpreted to mean that they weren't ready [396] for me to join, which I did. Then to the best of my memory there was an order came from the screen commander to change screen formation which would give me a place to go.

I don't ever remember that signal being executed, but I do remember that the people started to move, to give me a place to go. Of course, there was plenty of room out there. I could have slid into formation and still left room on either side with the other people even if they hadn't moved, but they started to move to give me my place to go. And I had told my people and the Combat Information Center to give me a course to station, to keep me about where, from a thousand to fifteen hundred yards clear of the closest heavy ship.

I was proceeding up the starboard side from the starboard quarters so to speak, of the formation, parallel to the formation and forward into my station. I had come around and they were steaming on two five seven.

Well, I knew that my screening station was out to starboard of the formation, so I was steaming, if I'm not mistaken, two six zero. It was three degrees divergent from their course which would take me more to starboard, waiting for the orders to come, to go where I was supposed to go, and then I was told to expedite moving to a point where I could go to station, which I did. And then the formation, I was ordered to slow down. They were making fourteen knots. They were ordered to slow down from fourteen knots to [397] eight knots, and then

from eight knots to five knots. Well, when one ship is behind like that, they frequently slow down to let him catch up, which I interpreted this as a logical thing, and as I came up abeam of the formation and I think I had between five and six thousand yards to go to station while they went back to fourteen knots, and I was making twenty-two knots at that time, and speed differential from eight knots to twenty-two knots would have taken me up to station in fairly respectable rate of speed, and just about the time of the last speed change, I think it was, I was ordered to continue to expedite going to position to take station, which I did; was already making twenty-two knots. That was practically what I had available. I kept one knot, I think it was, in reserve.

* * *

Cross-examination by Mr. Crenshaw:

[453] Q. I am trying to find out when some human on your vessel sighted the lights that developed to be the S.S. Washington. [454] A. Well, I had previously told you that I had seen the lights.

Q. Captain, I don't mean to interrupt you, but there has been a lot of testimony in this case. You have testified before the Navy, before the Coast Guard and now before this Court. Now, for the purposes of this litigation, there is no evidence in this case, or any record in this case except what goes into this Court's proceedings, so it will be helpful to the Court and to me and to Mr. McGovern if you could just clarify the situation. We know that you are intimately familiar with this and that you have been through it a number of times and it is difficult to separate these various things in your mind, and I don't mean to be pressing you, but I do want to find out now from you by a simple statement when it was to your knowledge that someone on the Ruchamkin sighted the lights that developed to be the Washington. A. Well, obviously,

A. C. Jackson for Government—Cross.

Mr. Crenshaw, I can only testify what I know of my own knowledge and I think that I have previously testified what you hold there, that my best estimate that when I first saw this ship, that I thought it was about eight hundred yards. I also further testified that I thought that was within two hundred yards of where I expected the Glynn to be. You have perused that at some length. You know that to be a fact. And Mr. Jarboe had been on the ship approximately five months, and his estimate between a thousand yards and my [455] eight hundred yards is simply a matter of personal opinion. I would say that he probably, if that is the case, saw it about the same time I did.

Q. And that is the basis for your statement that you saw the ship before anybody else in your vessel? A. I feel certain, reasonably certain that I was the first one to recognize the danger that it represented.

Q. Now when you first sighted the lights that developed to be the Washington, at approximately eight hundred yards, did you recognize then the danger which I think you have described as terrible and imminent? A. No, sir; not immediately.

Q. You described sighting two white lights, a masthead and a running light and then a green light and stating that that tied in very well with what you expected to see in approaching the Glynn from the starboard side; is that correct? A. That's correct.

Q. Now do you recall which of those lights was lower than the other, whether it was to the right or to the left of the other? A. Well, of course, your running light is over your mast light, mastheard light. The mastheard light is higher and higher than your side light normally.

Q. And that inter relationship between those two lights is of great help to mariners in determining direction [456] of vessels, is it not? A. Very true.

A. C. Jackson - for Government - Cross

Q. Did you notice on this particular night which light was lower than the other? A. I don't remember offhand, but I do remember that when I was coming up there that I could, when I finally spotted this ship, for what it was, I saw it was closing me, and I spotted that bow wave, got right full rudder to get out of there, if I could; if I had turned left, I would have gone right into the formation which was just as dangerous as what was happening to me.

Q. As to those lights then you don't remember looking at them to determine which of those two lights was lower than the other, do you? A. Which lights specifically are you referring to? Are you referring to the side lights, the masthead or the running?

Q. When you saw two white lights which you assumed to be the masthead and running lights of the vessel and the green light which you assumed to be the running light of a vessel, do you remember whether you made a conscious effort to tell which light was lower than the other of the two white lights that you sighted? A. Well, obviously, your - if what I saw, the running, the masthead light was lower than the running light [457] have to be - well, if you look at a ship like so, well, here would be your running light, your masthead light and your side light. If you came up from astern, you would see it exactly the same sequence of lights.

Q. That's right, so you saw what you expected to see? A. Exactly.

Q. A light which you thought was a ship in the formation? A. That's right.

The Court: Mr. Crenshaw, have you reached a breaking point?

Mr. Crenshaw: I have.

The Court: Mr. Marshal, recess until 2:15.

A. C. Jackson—for Government—Cross

AFTER RECESS

(The witness resumed the witness stand.)

By Mr. Crenshaw:

Q. Captain Jackson, before lunch we were talking about your observations as you came up and sighted the Washington. Now, Captain, we have made frequent references to the Court of Inquiry testimony and I would like to make one more on page 55 in the middle of that long paragraph, which runs from a little bit above the middle of the page to the bottom, a sentence near the right edge of the page with the two words "so shortly" and then on the next line thereafter—have you been able to find it? A. I see it.

* * *

[465] I have a brief explanation for that, if you would [466] care to hear it.

I had no knowledge of the fact that the Carter Hall had failed to go out that night. If we had taken a ship count, we would have come up with the right number of ships. The ships appeared to be, I would say, in a twelve-mile scale except for maybe short intervals and the appearance of the formation, as you can imagine, of several ships very close together, it looks like, shall we say, a cluster of grapes. It would have been very difficult for me to have picked out one ship amongst them.

Q. Thank you, sir. A. Which is essentially what I told you five minutes before.

Q. Now, Captain, at or just before the collision, did you sound any whistles? A. No.

Q. Or did you hear any whistles being sounded? A. I previously testified in this court that after my bow had passed the bow of the Washington I heard several short blasts on his whistle.

Q. Do you happen to recall how long before the collision it was that you heard those blasts? A. It was a very short time.

Q. Would you say it was over thirty seconds? A. I would say it was something in the neighborhood of [467] maybe nine-tenths of a second, a second and a half.

• • •

[530] Thereupon GEORGE H. WHITING, was called as a witness by counsel on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. McGovern:

Q. Captain Whiting, where do you live? A. I live in Norfolk, Virginia, sir.

Q. How long have you been in the Navy? A. I have been commissioned since June, 1936.

Q. June, 1936? A. Yes, sir.

Q. Were you a prisoner of war of the Japanese? A. Yes, sir; for two years and five months during World War II.

[531] Q. Were you a Commander at the time of the accident between the tanker Washington and the Ruchamkin? A. Yes, sir; I was.

Q. What were you assigned to; what duty were you assigned at that time? A. At that time I was Chief Staff Officer, Operations and Plans Officer on the staff of Commander, Transport Division 22, Captain Day.

Q. Now, Captain Whiting, we have produced you today in response to a telegram from the counsel for the Texas Company, after we provided them with your testimony before the Navy Board of Investigation, and accordingly there is only one matter on which I want to direct your attention on my examination. That is, were there any

limitations on the beaches along the Atlantic Coast which could be used for amphibious training operations of the type which was involved in Operation Seascape? A. There were only two beaches on the entire Atlantic Coast which were suitable for this purpose. Those were the beaches at Camp Pendleton, Virginia, just south of Virginia Beach, and the beaches of Onslow Beach, North Carolina, near Camp Lejeune, North Carolina.

Q. One beach is above Hatteras and the other beach is below Hatteras? A. Camp Lejeune, the beaches at Onslow I believe are [532] just below Cape Lookout, I believe it is.

* * *

Cross-examination by Mr. Crenshaw:

[552] Q. Then, you'd have positions of relative danger then. Some places in there are less dangerous than others: is that correct? A. Yes.

Q. And the most dangerous place would be right in the middle, wouldn't it? A. In the middle of the main body.

Q. Yes, sir. A. That would be very dangerous.

Q. Now on this particular night, when do you recall having knowledge of the whereabouts of the Washington? A. It was within a minute or two after we had changed course to two five seven.

Q. Do you have any recollection of the range; was that the six point seven miles? A. As I recall it was a range about that time, sir.

Q. Approximately, when, Captain Whiting, did you have first knowledge of the position of the Ruchamkin? A. The first knowledge that I had that the Ruchamkin was close to the formation was at the time of the collision, sir.

Q. Now do you recall any activity on the flag bridge or among the flag officers concerning a contact at a bearing [553] of zero six five? A. I recall that I had just stepped out on the wing of the bridge and someone, I believe it was the Staff Watch Officer, came around from the port side

of the bridge to the starboard side where I was, and asked me if I saw a contact back in the direction of the starboard quarter, and I think he specified zero six five, and I looked and did not see anything at that time. I did not know then that I was looking for the Ruchamkin.

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[570] Q. Now had you considered at that time whether or not [571] the Washington would have to it, assuming they were visible to them, the red light or the green light of the vessels in your formation? A. The Washington would have the red lights of the vessel in our formation up to the point where she crossed the bows of the particular vessels and then she would have both, or the green light. I mean as she passed each individual vessel, of course, she would get the green light.

Q. She would get the green light from that time? A. Yes.

Q. In your experience in the Navy and sailing in the formation and seeing merchant shipping, would you count on the tanker recognizing your lights as those of a naval formation? A. Well, I have had no experience on the other side, sir; that is, being a merchant ship. I would think that the tanker should have recognized the lights as being that of a naval formation, sir.

Q. Now were you asked substantially a similar question before the Court of Inquiry as to whether or not you would count on the tanker changing course or avoiding your formation? Do you recall that? A. Whether I would count on the tanker?

Q. Yes. A. Changing course. I do recall that question, sir, and I think my answer may need some clarification. As I [572] remember I stated I would not count on it. By saying that I intended that I would not have blind faith in the tanker changing course in accordance with the International Rules. That is, I would, as privileged vessel,

I would not hold on right to the bitter and expecting that she would change course.

* * *

JOHN D. CAIN, witness for the Texas Company, *direct examination by Mr. Brush*:

[657] Q. How much of that time have you spent traveling up [658] and down the Atlantic Coast? A. I couldn't say for sure. I'd estimate at least half of that time, though.

Q. In November, 1952, were you master of the tanker Washington? A. I was.

Q. Will you describe the Washington in a general way, the type of vessel she was, her approximate length, and so forth. A. Well, she's regular T-2 type tanker, was built by the Government during the World War II. Her over-all length is five hundred twenty-three and a half feet. She is some ten thousand; little better than ten thousand tons, gross tonnage.

Q. Were you master of the Washington on the night of November 13-14, when she had the collision with the U.S.S. Ruchamkin? A. I was.

Q. At that time was the Washington light or loaded? A. She was loaded.

Q. What port had she left before the collision? A. We sailed from Atreco; that is a little oil terminal, belonging to the Atlantic Refining Company on the lower part of the Neches River. We sailed from Atreco about noon on the 9th of November, 1952.

* * *

[663] Q. What watch does the Second Mate, or did the Second Mate stand at the time of this collision? A. He's standing the twelve to four watch.

Q. Who stood the eight to twelve watch? A. Mr. Williams.

Q. On the night of this collision were you up and

Q. Where were you? A. I was asleep.

Q. Do you recall now what time you turned in? A. About ten-thirty P. M. The evening before the collision.

Q. What did you do before you turned in, Captain? A. I wrote up the transitory night orders.

Q. I show you a book and a loose page. Will you look at that and tell me if you know what they are and describe them for us and tell us if you know who prepared them. A. This looks—pages standing order that I prepared myself which were in effect on the Washington at the time of the collision. These entries in this book were prepared by myself, the transitory night orders. The Deck Officer—

Q. Was it the practice on the Washington for the officers to sign these night orders? A. Yes, sir.

* * *

[673] *Cross-examination by Mr. McGovern:*

Q. Captain, you sailed during the war? A. Yes, sir.

Q. Sailing in convoy? A. About half of the war I did convoy.

Q. Now I am looking at your night order book, and I am looking at the standing orders. I want to call your attention—you have Order One, Obey all rules of the road, having an especial regard for the general prudential rule and the precautionary rule. Was that a standing order of your ship? A. Yes, sir; it was.

Q. Two. Give all vessels a wide birth. Now what's that mean to a layman? A. That merely is a caution to safe navigation.

Q. Was that a standing rule of your ship? A. Yes, sir.

Q. Three. Do not hesitate to alter or reverse course to avoid immediate danger. Was that a standing rule of your ship? A. Yes, sir.

Q. Four. Do not hesitate to call me at any time you [674] are in doubt. Was that a standing rule of your ship?

Q. Was it actually complied with in your ship? A. As far as I know. If I wasn't called I would never know if the man was in doubt.

Q. No, but were there occasions on which you were in fact called? A. Yes, sir. Oh, yes, sir; that's right.

Q. It's not just a paper rule. It was a real rule? A. No, was a real rule.

Q. Five. Check all courses and feel free to make use of all facilities for determining the vessel's position in maintaining safety. Let me know when courses given or action taken does not seem proper or would seem to stand the vessel in danger. A. That's right.

Q. Six. When visibility becomes poor start radar, reduce speed and call me. A. That's correct.

Q. Was that complied with in fact? A. Yes, sir.

Q. Seven. Check compasses frequently. Does that comply? A. Yes, sir.

* * *

[688] Q. Now were your mates permitted to smoke on the open bridge? A. No, sir.

Q. Were your mates— A. Wasn't their practice.

Q. Were your mates permitted to smoke in the wheelhouse? A. Yes, sir.

Q. Were the doors of the open bridge closed or were the doors to the open bridge open? A. They were open that night.

Q. Well, I am interested in what the smoking regulations are. A. Well, they—cool weather there they may close the weather door occasionally.

Q. What kind of petroleum products were you carrying—you can keep that—on the night of this collision? A. Well, in our forward group of tanks we had Diesel, and in the after group there we had what I learned later they designated as premium, was a Cities Service product we had loaded in Lake Charles, high-test gas.

Q. You were an inflammable ship then in the after part? A. Yes, sir.

Q. Now let us get back to the smoking on the ship with high-test gas. Did Mr. Riche smoke? A. Yes, sir; he smokes.

* * *

[695] Q. What did he tell you? [696] A. Well, he concurred with my opinion about it.

Q. Now you next arrived off the Delaware Bay? A. That's correct.

Q. Now did anybody come aboard from the company? A. Yes, sir.

Q. Who came aboard from the company? A. Captain Small.

Q. What is his position with the company? A. He is some sort of a port captain, assistant port captain, I believe he is.

Q. Where did he come aboard from? A. He came aboard with the pilot, when the pilot boarded us.

Q. That was off the lightship. Overfalls Lightship? A. Right off the pilot station there.

Q. Did anybody else come aboard before you went up the Delaware River? A. Yes, sir.

Q. Who else? A. Mr. Brush.

Q. Mr. Brush, sitting over here? A. That's right.

Q. Anybody else come aboard with Mr. Brush? A. The pilot came aboard, and I believe, I don't know if Mr. Wood came aboard with Mr. Brush or came aboard at [697] Philadelphia. I don't remember that.

Q. Mr. Wood is Mr. Brush's assistant here? A. That's right.

Q. Now did the Marine Superintendent come aboard? A. No, sir; he didn't.

Q. Now what time was it that you prepared this marine casualty report?

John D. Cain—for Texas Company—Cross

The Clerk: Government's for identification 31 and 32.

Mr. McGovern: Just back pages of the same thing. 31.

The Clerk: 31.

By Mr. McGovern:

Q. Now, Captain, I show you this Coast Guard accident report which is on Form 2692, Government's 31. I ask you if that is your signature? A. That's right.

Q. Now I call your attention to the fact that this is dated up here the 15th of November, 1952. A. That's right.

Q. Was that the date you prepared it? A. Yes, sir. Commander Kelly of the Coast Guard was there when we filled this out and he took it with him.

Q. Commander Kelly from Philadelphia? A. I believe he is Commander Kelly.

[698] Q. Where was your ship when you filled out that form? A. We were in Philadelphia.

Q. You were tied up at the dock? A. At the Atlantic dock.

Q. Mr. Brush and Mr. Wood had been on board by that time? A. Yes, sir.

Q. I call your attention to the statement made down here where it says, Because of the casualty and it says, USN navigating without lights. A. We—that is my statement all right, but the information I got was headlines in the paper that somebody had handed me that morning when we arrived, and I would assume that that release was given by the Navy to the Press, probably public relations. Maybe someday I will learn not to rely on the things I see in the papers.

Q. Well now, Captain, I understand that you have been questioned about this press statement before, and I don't

want to unnecessarily press you on it, but my concern is merely that this statement that the Navy was running without lights was made by you in a report. A. I understand that that was erroneous on my part, but I was led to believe that through what I saw in the papers there, and I assumed that it was released from the Navy.

Q. But at that time you had already talked to Mr. Brush [699] and Mr. Wood? A. Yes, sir.

* * *

Q. Now the next question is, Where did you receive the information that this Navy flotilla was traveling without [700] lights? Your answer, The first. I actually knew for certain what had happened, I was in the dark as much as a lot of other people who wondered what happened there, but had they been carrying lights, we would have seen them; they wouldn't have enveloped us that quickly without any forewarning to us. Now, Captain, is that a correct report of what you said at the time? A. Yes, it is.

Mr. McGovern: Your Honor, I understand that —I don't in any way want to question the Court's ruling and I'm not here to reargue a point that has been decided against me on discovery, but I am concerned lest when I get to another court, contention is made that at this point I should have demanded the Captain's statement to Mr. Brush and made some exceptions to it. Now I don't want to disturb the surroundings in any way—

The Court: Well, it is in the record that you did ask for it and that your objection runs through the case.

Mr. McGovern: I just wanted to make sure. Mr. Brush, is that agreeable with you?

Mr. Brush: Sure.

John D. Cain—for Texas Company—Cross

Mr. McGovern: I see no sense in making useless demands, but I have been other places where [701] they say I should have done it.

* * *

[714] *By Mr. O'Connell:*

Q. Captain, from time to time, were you, you were out at sea, did you, do you receive radio messages from the home office of the Company, or one of the branch offices as to the change in position or a—not a change in position, a change in orders or anything relevant to the navigation of the ship; where you're going, charter and so forth? A. We receive orders from, diverting orders and so forth.

Q. You get them by radio? A. By radio.

Q. Is there any particular time of the day when you listen in on the home office or they send messages to you? A. No, they filed them there in the office. I am not sure what channels they go through to get to us.

[715] Q. Is there a definite time of the day when you receive them? A. No. There is no definite time.

Q. To your knowledge, Captain, did you receive any radio messages from the company with regard to a notice of any naval maneuvers being in the vicinity of Virginia Capes? A. Not to my knowledge; no.

Q. It would have been possible for you to receive it, though, by radio? A. It would have been possible. Yes.

Q. Now, Captain, you have stated that you had a properly manned ship; is that correct? A. Yes, sir.

Q. Did you yourself ascertain first of all if the mates on your watch could read signal lights? A. No, sir; you didn't ascertain that.

Q. You didn't find out of your own knowledge whether they could read signal lights? A. No, I didn't.

Q. So you didn't know of your own knowledge whether they actually, they could read a blinking signal? A. No,

Leonel J. Foitier—for Texas Company—Direct

Q. Did you of your knowledge find out if the mates on your watch could properly read a radar screen? A. I believe I had.

* * *

[722] Thereupon, LEONEL J. FOITIER was called as a witness by counsel on behalf of the Texas Company and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Crenshaw:

Q. Mr. Foitier, what is your occupation? A. I am a radio operator for the Texas Company.

[723] Q. And were you on the S.S. Washington on the night of November 13-14? A. Yes, sir.

Q. 1952. And in what capacity were you serving aboard the Washington then, Mr. Foitier? A. Radió operator.

Q. And are you duly licensed to perform such a function? A. Yes, sir.

Q. Do you recall when your licénse was last issued or renewed? A. My last renewal was in October of this year. Last year, I mean.

Q. Prior to that do you have any recollection as to that, sir? A. No, sir; but the license are issued for five years.

Q. And there was an outstanding license issued to you at the time of the collision? A. No, sir; I am sorry.

Q. There was a license issued to you which was effective as of the time of the collision; you were actually licensed at that time? A. Oh, yes, sir. Yes, sir.

Q. Now, Mr. Foitier, how many hours a day did you stand watch, or are you on duty in connection with your radio [724] operator's work on the merchantman? A. Eight hours. Sometimes a little more, but never less than eight.

Q. Now that is eight out of the total twenty-four? A. Yes, sir.

Leonel J. Foitier—for Texas Company—Cross

Q. Now were you standing those watches, the eight-hour period on the trip from Atreco to Philadelphia in which this collision occurred? A. Yes, sir.

Q. Now what stations or frequency do you guard on that watch? A. Well, we got five hundred, of course, and all the commercial stations. We listen for messages from the company New York Office, Port Arthur Office or any branch office that may have occasion to send company messages to the ship, and that is all the commercial stations on the East Coast and Gulf Coast too.

Q. Now do you tune in especially for messages such as the weather forecast or the Hydrographic messages, Hydro-Lant's and things like that? A. I tune in especial commercial stations for the weather.

Q. Does that come out at a certain time every day? A. Yes, sir; it comes out ten-thirty in the morning.

* * * *

Cross-examination by Mr. McGovern:

[729] Q. Did you speak to Mr. Brush, or Mr. Wood before you testified in Philadelphia? [730] A. I cannot recall, really, if I did or not. I might have, but I don't remember.

Q. Well, now, did you testify at Philadelphia—this is Question 20. A. Yes, sir; I did.

Q. Did you have any orders from the master of the Washington to listen for Hydrographic or Notice to Mariners broadcast? Do you remember that question? A. No, I don't remember the question

Q. Well let me show it to you and show you your answer which was; No, sir, and ask you whether that correctly reports what you testified at that time. A. It is No, sir, and the answer would have been No, sir, anyhow. I didn't know what you meant.

Q. Yes, sir. Now I call your attention to Question 47 which was, When was the last Hydrographic information received by you, and your answer at that time is—is that

still your answer? A. I don't think I received—I might qualify that. I am not sure. I don't believe I received one. I might have about something, maybe St. Johns River, some inlet, but I don't think I did.

Q. Now, Mr. Foitier, you talked about company message. Was there any schedule on which the company would send messages [731] to Texas? A. No, sir; they might come in any time.

[750] Thereupon, OLIVER FRANCIS RICHE was called as a witness by counsel on behalf of the Texas Company and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Brash:

Q. Mr. Riche, how old are you? [751] A. Forty-eight years old, sir.

Q. Where do you reside? A. 6250 Housy Street, Groves, Texas.

Q. Where were you born? A. I was born in the state of Louisiana, December 11th, 1907.

Q. What is your occupation? A. I am at the present time Chief Mate on the S.S. Alabama for the Texas Company.

Q. Do you have a license of any kind? A. I have a Master of Oceans.

Q. Unlimited? A. Unlimited. Yes, sir.

Q. How long have you had it? A. I am on my fifteenth year, sir.

Q. How long have you been going to sea? A. Since sometime in '28, 1928.

Q. Now in the interval between '28 and the present time what has been your sea experience? Will you start from the beginning and just give us a general outline of

where you have sailed, what you have done. A. Well, I worked on river boats, docking and undocking ships in 1928 and October the 10th, 1929, I started on deep sea vessels with the Texas Company, and I sailed at various ports throughout Central America, and all parts of [752] the world, and on this American Coast.

* * *

[753] Q. During that period what was your position on the Washington? A. Second officer.

Q. As second officer what watch did you have? A. I had out at sea the twelve to four watch and in port sometimes I'd stand somebody else's watch with mine. My regular watch was the twelve-four watch, though.

Q. That is the regular second mate's watch? A. Yes, sir; twelve to four watch.

Q. Do you remember what port the Washington sailed from previous to the collision? A. Yes, sir. I think it's small village, town, Atreco, close to Port Arthur, between Port Arthur and Beaumont, at the end of the Neches River.

Q. When she sailed was she light or loaded? A. We were loaded, sir.

Q. What did she have as cargo? A. We had a mixed cargo of, if I'm not mistaken, it was kerosene and premium gasoline, high-test gasoline.

Q. Do you remember where she was bound? A. Philadelphia, Pennsylvania. Atlantic Refining.

Q. In your sea experience previous to the collision had you made that trip up and down the Coast towards Philadelphia before? [754] A. Yes, sir; several times.

Q. Will you describe in a general way where the Washington went after she left Atreco? What course she followed, approximately, up along the Coast? A. Well, we took departure at Sabine Bar to what is known as Sabine approach buoy and from thence towards Tortugas Light-

house, approximately eleven or twelve miles off. Thence around the Florida keys to Juniper Inlet Lighthouse. Thence from Juniper Inlet Lighthouse, we followed the strongest part of the Gulfstream to approximately eight miles abeam of Diamond Shoals Light Vessel. Thence from Diamond Shoals Light Vessel to a target buoy some miles north of Diamond Shoals. Thence from that buoy to the mouth of the Delaware River.

Q. When you made this trip, previous to this occasion toward Philadelphia, did you follow substantially the same course or a similar course? A. Approximately the same course, sir.

Q. In your trips up and down the Coast following that course have you seen other merchant vessels that are in these areas making the same or following the same course? A. Yes, sir; I have.

Q. Now when did you go on watch on the night of November 13-14, 1952? A. At twelve o'clock, midnight.

[755] Q. And did you relieve another officer of the Washington? A. I did.

Q. What was his name? A. If I remember correctly, I don't remember his initials, but his last name was Mr. Williams.

Q. What was the weather like when you went on watch? A. Well, it was a very dark night and no moon and a calm sea with a light breeze.

Q. When you went on watch, what did you do? Will you tell us in a general way exactly what you have done, as you recall? A. Yes, sir; I went in the chart room. I read the night orders and signed them. I assumed my position by a dead reckoning on the chart, and I figured my position by dead reckoning from the time that I was, that I took over the watch to the four o'clock in the morning, to see if I would have been in sight of any navigational lights. I found everything was well in order and I relieved the Third Mate.

Oliver Francis Riche—for Texas Company—Direct

Q. Do you remember what course the Washington was on as you took over the watch? A. Yes, sir; the course was zero zero nine gyro.

Q. Were you steering by gyro? A. Yes, sir.

[756] Q. Did gyro have any error in it? A. It did, sir.

Q. How much of an error? A. It had approximately a degree and a half west.

Q. At what speed was the Washington traveling? A. We were making approximately fourteen and a half knots.

Q. Was the Washington exhibiting any lights? A. Yes, sir; we were exhibiting the actual complement of running lights, the side lights, the masthead lights, the range light and stern light.

Q. Did you check those lights sometime, either when you went on watch or after you went on watch, to see if they were burning? A. Yes, I did.

Q. Were they burning? A. Yes, sir.

Q. Now first let us take the period from midnight until one o'clock. Did anything occur during that hour after you went on watch? A. Well, there was ships on both sides of me, lights, white lights. I could see both sides of me, and nothing unusual occurred.

Q. As you took over the watch at midnight did you have any conversation with the other mate about lights that were [757] visible? Did he report any to you? A. Yes, sir; he did. He told me there were lights on the—he asked me could I see those lights on the starboard side and could I see those lights on the port side. I said, "Yes, sir; I see very well."

Q. And then you took over? A. And then I took over the watch; yes, sir.

Q. Who else was on watch, on the deck watch with you at that time? A. Well, in the wheelhouse there was Mr. Caldwell, the Quartermaster.

Q. Where was the wheel with respect to the forward part or forward bulkhead of the pilothouse? A. In the center or nearly so of the wheelhouse.

Q. Was it close to the forward bulkhead or back aft of it? A. It was a little bit closer to the forward bulkhead, probably.

Q. How large an area, roughly? Can you give us some dimensions of this pilothouse on the Washington? A. Well, sir, I think I could. The ship is approximately sixty feet wide, and the wheelhouse takes about one-third of that in width and about—

Q. Were there any open wings on the bridge? A. Yes, there's about one-third of the width on the [758] starboard side and one-third of the width on the port side.

Q. What equipment for navigational purposes did you have in the wheelhouse besides the wheel? A. Well, sir, we have a rudder indicator, a revolution indicator, maneuvering telegraph, a docking telegraph, a radar.

Q. Was the radar turned on when you took over the watch? A. Yes, sir; it was.

Q. By the way, did you have any, or did you have at this time any training in radar? A. Yes, sir; I have.

Q. What training did you have at that time? A. I went to the Sperry Gyro School in New Orleans, sir.

Q. And how much of a course was that? A. I took a week's training course which they issued me a certificate stating so.

Q. What does that certificate indicate? A. It indicates that I have been through this five days of radar training in the use of operations and minor tuning, and so forth and so on.

Q. Now on this night as you proceeded along, was there anyone stationed as lookout? A. Yes, sir; there was.

Q. Can you tell us who that was and how long he stood [759] lookout? A. There were two lookouts. There was, Mr. Smith was on standby lookout, and Mr. Upton.

Q. Who was on lookout from midnight to one o'clock? A. Midnight to one o'clock was—let's see—

Q. Do you remember who was lookout at the time of the collision? A. Yes, sir. Mr. Upton was on lookout at the time of the collision, so that would put Mr. Smith on lookout from twelve to one because he relieves the wheel at two o'clock.

Q. Now you have mentioned Mr. Caldwell, Mr. Smith, and Mr. Upton. Were they the only three seamen on watch during this period of midnight until four o'clock? A. On deck; yes, sir.

Q. On deck. That's what I mean. Will you describe in a general way what the routine of their watches were at this time? A. Yes, sir. Mr. Smith went on lookout from twelve to one. Then Mr. Upton would relieve him and Mr. Smith would go on a standby lookout aft. And at two o'clock he relieves Mr. Caldwell, the Quartermaster, for a rest period of thirty minutes.

Q. Now is that what occurred on this night? A. Yes, sir.

* * *

[761] Q. That occurred about one-fifteen you said? A. Approximately one-fifteen, but I don't know what time it was because I didn't look at the clock.

Q. Now will you continue on from that point and tell us what you observed and what was done? What you saw? A. Well, we kept going on after I got back on the course zero zero nine gyro. We kept going along and I kept watching those lights going on my starboard side, going slowly astern of me, like I was passing them, or like it could have been ships that I was—slower than I was.

Q. What color were these lights? A. They were all white lights on my starboard hand and port hand.

Q. Did you do anything to ascertain how close they were? A. Yes, sir; at intervals walking across from one side of the bridge to the other like we generally do standing watch, I would go and glance in the radar.

[762] Q. And the radar was turned on, was it not? A. Yes, sir; it was in operation.

Q. What scale was your scope on? A. Well, we usually keep a fifteen-mile scale and that's what it was on that night, fifteen-mile scale.

Q. Is that just a blank scope on a fifteen-mile scale or does it have any writing? A. No, sir; it's a graduated scope on what we call in the radar language permanent markers. The first circle is five. The second is ten. The third is fifteen miles. They are permanent markers. Then we have a variable marker.

Q. When you looked at the radar on these various occasions, did you ascertain approximately where these lights were? A. Yes, sir. Looking at the lights and then glancing in the radar would tell me that they were passing, going to my starboard and aft of me. And that they were well off on my starboard side.

Q. Well now, to those of us who weren't there, tell us what you mean by well off. A. Well, I would say that anywhere between five and a half to six; some were as far as, off as fourteen miles. Never inside of five and a half miles or six miles.

Q. Then as you continued on, what occurred? You are now up to one-fifteen or one-thirty or thereabouts, as I [763] A. Well, we went on course zero zero nine, and I sighted almost right dead ahead of me two red lights about the same plane, but the right, or starboard hand red light was further off, going across my bow from starboard to port and moving very fast.

Q. Now did these two red lights bear from the Washington— A. Well, they were almost dead ahead on my starboard hand, a slight bit on the starboard side, coming from, moving in from my starboard to the port.

Q. What else did you observe about these red lights? A. Well, it seemed to me that they were close. Well close of me and going across my bow. They were bright.

Q. Were they going slow, or fast, or what? A. The lights were moving very fast through this dark.

Q. What else did you observe then? A. Well, I—

Q. What did you do? A. I went, I was steering course zero zero nine at the time I saw the two red lights and I assumed these were very close to—I went right ten or fourteen, about fourteen degrees, which would be about twenty, zero twenty-three.

Q. And then what did you do? A. I asked the Quartermaster, I says, "What are you on?" And he says, "Zero twenty-three." I says, "All right. Steady." [764] And I kept going until those two red lights that had crossed my bow were well on my port hand.

Q. Then what did you do next? A. I ordered him back on course zero zero nine.

Q. And then what happened? A. Well, about that time, when I ordered him back to zero zero nine, I saw a third red light.

Q. Now where did you see this third red light? A. This third red light was very close to my starboard hand, and coming across from my starboard bow to my port bow at a terrific speed.

Q. Are you able to tell us where that red light bore from you when you first sighted it? A. Well, it happened so fast and so close I could estimate it.

Q. Well, now, I hand you a pad with two ship models. Suppose you allow the larger one to represent the Washington and the smaller one to represent the red lights on this third vessel. Would you please draw, placing those models, draw the bearing or position of that third red light when you sighted it? A. Yes, sir; if it's all right if I stand up.

Q. I guess so.

The Court: Suppose we take a short recess while he draws it.

[765] (After recess.)

(The witness resumed the witness stand.)

By Mr. Brush:

Q. Mr. Riche, at the recess I asked you to draw the ship models, the angle at which you saw this red light, third red light, when you first saw it. Have you done that? A. Yes, sir; I have.

Q. Would you please sign your name at the bottom of that. A. (Signed.)

Q. Now I believe you said, or perhaps my recollection is faulty about it, but tell me when you saw this red light, how was it traveling? What was it doing? A. It was moving through the water very fast, sir. From my starboard to my port.

Mr. Brush: I will offer this.

Mr. McGovern: No objection.

The Court: Let it be admitted.

The Clerk: Texas Company No. 15.

(The Clerk so marked the drawing as Texas Defendant's Exhibit No. 15 in evidence.)

By Mr. Brush:

Q. What did you see and what happened next? A. Well, the minute I saw this third red light, I was going from twenty-three to zero zero nine, when I saw it, and [766] when I saw that red light, I ordered the wheel hard left immediately and run to the port side of the bridge to see if by coming hard left, see if my vessel would clear the

two red lights that had precedingly crossed my bow, and I watched that carefully, and I ordered hard left again and in the meantime also blew two blasts of the whistle followed by several short blasts.

Q. Then what happened? A. Then the accident occurred, sir.

Q. Can you estimate the interval of time between the moment when you first spotted this third red light and the time the vessels came together in the collision? A. Well, sir, that would be very, very hard to give you the right, the exact time, but I would say in a matter of about thirty seconds.

Q. Did you observe the time when the vessels came together? Are you able to tell us the time? A. No, sir. I did not observe the time because it was dark in the wheelhouse and you can't see the clock unless you put a light on.

Q. I see. Did you, after the collision, determine the time? A. Yes, sir.

Q. And how did you do that? A. Well, after the collision I called the engine room, [767] and I asked them what time had they logged the full speed astern bell when I went full speed astern, and the officer on watch in the engine room told me zero two-thirteen.

Q. And what did that indicate to you? A. That indicated to me that the accident happened a matter of seconds before that or close to that time.

Q. Are you able to estimate or tell us exactly about when you saw these two red lights that you first saw? Are you able to fix that time? A. Yes, sir; pretty close.

Q. How do you fix it? Did you look at the clock? A. No, sir; in the wheelhouse we have a ship's bell clock. It rings every half hour.

Q. Yes, sir. A. And it had struck four bells which indicated two o'clock, and it was after that time that I saw those two red lights, those first two red lights, which would

be between zero two zero two, or maybe a little later. It could have been zero zero two zero, five minutes. Zero two zero five.

Q. Let us go back a little bit. You testified some time ago about the wheel watch changing. Do you remember now when that change occurred? A. Very close to two o'clock, before.

Q. What was the change? I think you said that Mr. Caldwell was at the wheel? [768] A. Mr. Caldwell's what we call our regular Quartermaster, he was relieved by Mr. Smith.

Q. What time? A. A little before two o'clock.

Q. And was Smith at the wheel when four bells or two o'clock struck? A. Yes, sir; he was.

Q. And you think it was a little after that that you first sighted these two red lights? A. Two red lights; yes, sir.

Q. Now when the collision occurred, when two vessels came together, what did you see and what did you do? A. Well, sir, just before it, when I saw this vessel coming across, I looked over to my right a little bit and I saw some lights going around my stern, and then I run to the port wing of the bridge to see that I had cleared those other two ships, or two lights that had just crossed my bow before that, and I blowed the whistle and at the same time I also said, "Hard left," the second time, and I blowed the whistle. The collision occurred. And I run from the whistle on the port wing of the bridge to the maneuvering telegraph in the wheelhouse on the starboard side and I rang full speed astern.

Q. When did you ring full speed astern with respect to the time that the vessels came together? A. It was after the vessel had made contact that I rang [769] full speed astern.

Q. How long after? A. Well, it was very shortly after because the only—about, I would say eight, or about a dozen steps from the whistle to the telegraph, and I ran there.

Q. After you did that what occurred? A. Well, sir, the Captain came on the bridge by then.

Q. Did you have a conversation with the Captain? A. He asked me what happened and I told him that this fellow hit me, and I says, The wheel is hard left and the ship is full astern.

Q. And then what did you do thereafter? A. I just took my station at the telegraph and abided under his orders.

Q. Did the Washington remain in contact with this other vessel for any length of time? A. For a short period of time; yes, sir.

Q. What happened? A. Well, somebody on the Ruchamkin kept hollering, back away, back away.

Q. Did you back away? A. Yes, we—we were backing right after the collision. We stopped awhile. Then we backed again. Actually, we backed away from him, clear of him. The Captain asked him would he sink if we backed away. We didn't [770] get any answer. He asked him the second time, Would he sink if he backed away, and he, nobody answered. Then he asked him, Do you have medical assistance aboard? No answer. So when we got clear and dead in the water, we just stood by and eventually a Navy officer with a crew came aboard and I was in the wheel house at the time, and he asked a question to me. I don't recall the question. I says, "There is the Captain over there. If you have any questions, ask him."

He went over there and asked the Captain something. I couldn't hear what they were talking about because I was watching on the outside there, see that everything was all right as best as I could, and eventually the Navy officer got it, his information, he so desired, and I went with him back to the starboard side of the ship to the ladder and assisted him back on his vessel, and then reported back to the bridge.

* * *

Oliver Francis Riche—for Texas Company—Cross

Cross-examination by Mr. McGovern:

[802] Q. Would it be fair to say that your entire sea-going [803] career has been with the Texas Company? A. With the exception of a few months in 1928 on the tugboats in the Mississippi River.

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[805] Q. Where is Groves, Texas, with respect to Port Arthur? A. It is approximately on the border of the edge of the city limits of Port Arthur.

Q. Port Arthur is the Texas Company port? A. Sir?

Q. Port Arthur is the Texas Company port, one of the regular ports from which the Texas Company tankers—A. Yes, sir.

Q. Now let me get back to the night of the collision, of what was your health on the night of the collision? A. What was my what, sir?

Q. What was the state of your health on the night of the collision? A. Well, there was nothing wrong with me that I know of.

Q. Now this is before the Captain gave you the phenobarbital. A. Not anything that I knew of.

Q. Do you remember testifying before the Coast Guard? A. Yes, sir; I sure do.

Q. Do you remember Coast Guard asked you this question? This is two two one—At the time you made these entries in the rough deck log, would you say you were fairly calm and collective? Answer, No, I didn't get calm and collective until quite a bit after I had a sedative. I was nauseated a [806] little bit and a bad cold. Is that correct? A. Well, to a certain extent it is, but I wasn't sick. I had a slight cold and after such an accident would happen to a man, I think I would be a little upset.

Q. Now I am interested in what your bad cold was like before the accident. A. My bad cold? Approximately like I got now. I got a cold now.

Q. When did you become nauseated? A. After the collision, upset the—upsetted my nervous system and due to that which is connected with the alimentary canal of my body, that it upset that also.

Q. Now did you see the place where the troops had been when you ship pulled away? A. I didn't know there was any such thing on the ship at the time.

Q. Then the reason for your nausea was then not the sight of blood? A. No, sir; I did not leave the bridge, sir.

Q. What was the reason for your nausea, if you know? A. I just told you, was my nervous system, my stomach was nervous after the collision, and I was a little nauseated afterwards, but I never did get really sick from it.

* * *

[808] Q. You're auticipating me, sir. What was closed about the portholes? A. The portholes are clear glasses and they were merely closed, dogged down like all clear glass portholes are fastened with dogs.

Q. Now were they dogged down through the entire period of your watch? A. I could say that they all were dogged down. I would say that they were down.

Q. They were down during— A. That's right.

Q. Now were there a thick, glass porthole coverings that they customarily have on ships? A. Sir?

Q. They were thick, glass portholes covers A. Well, they were ordinary regulation, according to Coast Guard Regulations.

Q. Well, now, I would like to have you compare them with, say, the window glass in these windows. A. I don't know that window glass would pass the Coast [809] Guard Regulation, sir. I don't know.

Q. We are merely interested in finding out how thick the glass was. A. Well, sir, the Coast Guard said it was sufficient for seaworthy, and, therefore, when the Texas Company accepted it as such and consider it that—I don't know the thickness of the glass.

Q. Now let me get a further item in here, and that is, where was your chart room? A. The chart room is adjoining the pilothouse on the same level.

Q. Now where is the chart room with respect to the forward bulkhead, the bulkhead which had these three closed portholes in it? A. Well, the chart room would be abaft of that, sir, adjoining the after part of the wheelhouse.

Q. When you went on watch, did you go in the chart room? A. I certainly did.

Q. What did you do when you went in the chart room, when you first went on watch? A. Before the time that I was to go on watch, I walked into the chart room, I read the night orders, signed them, and I looked in the logbook to determine the last known position of the ship and from that I figured dead reckoning position where the vessel would be at twelve o'clock, or it would be at [810] one, two, three and four o'clock respectively.

Q. If you maintained your course and speed? A. If I maintained that course and speed; yes, sir.

Q. Was the other mate that you were relieving, were you, when you— A. Unless he was keeping a lookout while I was doing that.

Q. Now did you ever go back in the chart room again? A. I went through the chart room a number of times.

Q. Well, now, tell us how many times you went in the chart room between the time you first took over the watch and the time of the collision. A. Well, it is customary that we check the magnetic compass with the master gyrocompass, and also the gyro repeating compass, which is in the wheelhouse and the master gyrocompass is located in the after part of the chart room, after bulkhead, and I went in there approximately three or four times before the collision, just glanced at the compass and asked the quartermaster that was steering, "What are you on?" And he'd

holler out and I'd check the heading on the master gyro with the repeater gyro in the wheelhouse and also in the meantime he would glance in the magnetic compass to check the magnetic compass with the gyro.

* * *

[814] Q. Now on this bridge you have an open bridge on either side; is that correct. A. Wing bridge as we call it.

Q. Wing bridge? A. Yes, sir.

Q. All right. Now getting back to your location, do you have a little table or did you have a little table near the starboard porthole? A. Yes, sir; we did.

Q. What did you keep on that little table? A. Well, we used that table going in port for a table to write out the bell book and necessary papers. Sometimes the Captain used it to sign papers and we also, when we are, have any kind of use for the table, we use it to set something on it.

Q. Now, was this a table by a porthole which was closed? A. Yes, sir; it was below the starboard porthole.

Q. Now were you smoking on the bridge during the watch? A. No, sir.

Q. Which preceded— A. No, sir.

Q. You are sure of that now? A. By the bridge, sir, I assume you mean the outside [815] bridge, and it's not— it's not our habit of smoking on the outside bridge on an open bridge on a tanker, sir.

Q. You wouldn't have lived this long if you had, would you? A. That's right.

Q. Now did you smoke inside the wheelhouse during this watch? A. Yes, sir; that is permitted to smoke in the wheelhouse, in your living quarters, in the recreation rooms and certain designated places about the ship.

Q. Do you smoke quite a bit? A. Well, I would say I smoke average.

Q. Well, now, how many cigarettes did you smoke? A. I don't know, sir, how many I smoked. I didn't count them. I just smoke when I want to.

Q. Where do you keep the cigarettes? A. Sometimes in my pocket, sometimes on, in the porthole. It all depends.

Q. On this particular night? A. I don't recall, sir. I don't have no special place to keep them.

Q. You remember in the Coast Guard Question 205, you were asked, Can you recall the last time you were on the starboard side looking out the starboard side porthole of the wheelhouse before you moved to the center port of the—

[816] The Court: We cannot hear you.

Mr. McGovern: Before you moved to the center port of the forward bulkhead and thereafter observed these two red lights, the first two, and you answered, Well, I smoke quite a bit and that's where I keep my cigarettes and I generally lit one about every fifteen or twenty minutes and it was within twenty minutes that I'd be in that porthole because I know I had been smoking just a little previous to that. We have a little table there in the porthole where we keep our coffee cup and cigarettes.

The next question, 206, Do you customarily stand there while you smoke and drink your coffee, or do you move around? Answer, I move around with the exception of going outside the wheelhouse. We are not permitted to smoke outside the wheelhouse on account of explosive cargo that we carry.

Did you testify that?

The Witness: Yes, sir; but let me add something to that also. I do not drink coffee but once when

I go on watch and that is before I relieve the officer on watch and, in other words, what I was drinking that coffee and smoking that cigarette you're talking about, I was not on [817] watch. The other officer was still on the bridge and I had not relieved him.

By Mr. McGovern:

Q. And your answer was with respect—

The Court: We cannot hear you.
Mr. McGovern: I am sorry.

By Mr. McGovern:

Q. Mr. Mate, your answer was with respect to cigarettes and the Coast Guard, as you recorded as having said, Well, I smoke quite a bit and that is where I kept my cigarettes and I generally light one about every fifteen or twenty minutes and it was within twenty minutes that I had been in that porthole because I know I had been smoking just a little previous to that. A. Yes, I said that.

Q. That refers to a period in the question, and the question was, Can you recall the last time you were on the starboard side looking out the starboard side porthole of the wheelhouse before you moved to the center port of the forward bulkhead and thereafter observed these two red lights, the first two. A. No.

Q. Now the answer is not correct then? A. I didn't say it wasn't correct. I said no, I can't recall. You asked me could I recall. I said no.

[818] Q. Was Mr. Brush there? A. Mr. Brush?

Q. Yes, when you made this statement. A. I don't know whether he was or not. I don't remember. He might have been. He could have been, but I didn't look for him.

Q. Now did you in fact light a cigarette between the time you took over the watch and the time of the collision? A. I didn't get the question, sir.

Q. Did you—

The Court: Mr. McGovern, none of us can hear you.

By Mr. McGovern:

Q. Did you in fact light a cigarette in the period between the time you took over the watch and the collision? A. I probably lighted cigarettes; but I don't see anything against the law in that.

Q. We are merely asking you for the facts. We are not asking you to draw the conclusion. A. Well, I think I am allowed to smoke whenever I want to.

Q. Where, whereat were you standing when you did your smoking? A. I already told you inside the wheelhouse where we are required to smoke if we wish to smoke.

[819] Q. Now how about that little table in the porthole? Did you keep your cigarettes on the little table in the porthole? A. I already testified that I didn't have no special place to keep my cigarettes.

Q. Now can you tell us today how many cigarettes you smoked between taking over the watch and the time when you made your first change of course at o one one five, according to your testimony yesterday? A. No, I couldn't tell you.

Q. Was it one or more than one? A. I couldn't tell you that either it was more than one.

Q. Well, now, I want to take you on each one of these episodes and I want to take you through each one with respect to what happened before your made a course change and what happened after. Now the first one that I want to take you on is you made a change of course to the left,

or to the port hand and at o one one five, according to your testimony yesterday; is that correct? A. No, sir; that is not correct.

Q. All right. What was your testimony yesterday? A. I said that approximately. I didn't look at the time and I didn't know exact time, between one and one-fifteen. I made a course change to the left.

Q. Oh, it might have been one o'clock, it might have [820] been? A. No, sir; between one and one-fifteen.

Q. Now had the lookout reported the lights of any vessel before you made that course change? A. They reported white lights on both sides at all times all along, sir.

Q. I am only interested in the precise events. I don't want to learn anything except what you were told at this time. A. Well, I am telling you that they reported lights from the time I went on watch, all along the watch, all the lights that appeared to them, but I happened to see those lights way ahead of the time that they saw them because they were on the forecastle and were much lower than I was, and when they reported lights to me, I could see them way ahead of them.

Q. How did they report lights? Did they have a bell system? A. With the bell, sir.

Q. Now that is one bell for lights on the starboard, two bells for lights on the port, and three for lights dead ahead? A. That's right. That's all lights.

Q. Now how did you acknowledge their reports? A. Either by going—I always go outside, if the portholes are closed, and holler out to them, "Very well", or "All right", or sometimes we answer them with the bell on the [821] bridge and some of us answer with a flashlight, just one flash.

Q. When you made this first change of course, Mr. Caldwell was your helmsman? A. I don't understand the question.

Oliver Francis Riche—for Texas Company—Cross

Q. Was Mr. Caldwell your helmsman when you made the first change of course? A. At what time are you referring?

Q. Between one and one-fifteen. A. Yes, sir; he was at the wheel.

Q. Now did you hear two bells from the lookout before you directed that change of course? A. I heard bells, several bells before that, sir. There were ships before that, lights, and ships close together to that light, and he just kept ringing bells as the lights came to him, and I kept answering to him. Yes, sir.

Q. Now please give us the bells in sequence; which bell did he ring first; one bell for ship on the starboard hand, or two bells? A. I already told you that when I went on watch at twelve o'clock there were several lights on my port and starboard side and they kept that way until the collision, and all the bells were sighted and answered that we could see.

Q. Mr. Mate, I am still interested in the bell that you got from the lookout which occurred before you made your [822] first change of course. A. I don't know if that was the light that he saw when he rang that bell.

Q. I want to read you Mr. Caldwell's testimony before the Coast Guard, which is evidence in this case. A. Mr. Caldwell was not on lookout. He was at the wheel.

Q. That's right. He was referring to the events which he heard in the wheelhouse. He was in the same wheelhouse with you? A. That's right.

Q. If he heard something, you would have heard it, you would be, were in the same place where you could have heard it? A. Yes, sir; I always did hear them bells.

Q. Now Question 146, you said you heard the two bells up forward which you assumed to be your lookout giving a report of the ships ahead. Exactly what did those two bells indicate to you?

Answer, That there was objects sighted on the port hand somewhere.

147, Did the mate on watch give any indication of having heard these two bells? Yes, he picked up his glasses and looked to the port.

Now do you remember doing that? A. Yes, sir; I picked up the glass, the binoculars, [823] seven-fifty binoculars, and what he meant by looking through the port, through the port side, through the port wing of the bridge, I observed that light and kept a close watch on it.

Q. That was the light on your port hand? A. Yes, sir; that certain one.

Q. Now— A. It was more than one light on the port hand, but that certain one I was watching closely.

Q. How close was that light on your port hand? A. I don't know, sir.

Q. What color was it? A. When I first sighted it, it was white and then I saw his green light.

Q. Now what did this indicate to you? A. That he was coming across my red port bow.

Q. Could you see his other white light? A. I could see two white lights, his range light and the masthead light and his green light eventually.

Q. Was he opened it, was it— A. I don't understand what you mean.

Q. Was the range opening across your bow or was it closing across your bow? A. The range, he was slightly opened.

Q. How close did that light come to you? A. I did not try to indicate the distance he was. I saw [824] that he wasn't going to give me no right-of-way and time enough that I thought that my experience out there, thought was time enough to prevent a collision, so I went to the left, give him the right-of-way, and when he was well clear to my starboard side, I come back on my course.

Q. Well, now it is that change of course that I am interested in. Was this light which you saw within two miles of you? A. I don't know, sir.

Q. Well, you're customarily used to judging distance at sea, are you not? A. Yes, sir.

Q. Well, is this a matter which was within your professional competence? A. Yes, sir.

Q. Well, could you give us your best professional estimate about how close he came? A. Well, sir, you could see a colored light approximately two to three miles at that time, and a clear night, which was clear, and a dark night, but then there was also other white lights on the port side and the starboard side that I was keeping in mind and watching closely. And that fellow didn't seem to, that certain light didn't seem to want to go astern of me, so I give him the right-of-way to keep clear of him and then from then on, after he was clear of me, I watched the [825] other lights.

Q. Now at that time you were the privileged vessel, were you not? A. Yes, sir; but there is a general prudential rule, in the rules that says to keep clear and prevent all collisions, and that is what I tried to do.

Q. Well, now, how far left did you come when you made your change to left? A. I asked the quartermaster did he see that white light, and he said, "Yes." I says, "Put her on your starboard side of your mast and keep her there."

Q. Now do you know how many degrees he had to change to do that? A. Well, it was approximately, it could have been twenty-five, thirty degrees.

Q. Were you around in the Coast Guard when Caldwell testified? A. Sir?

Q. Were you at the Coast Guard hearing when Caldwell testified? A. I don't remember his testimony.

Q. Well, his testimony had been—.

The Court: We cannot hear you.

Mr. McGovern: I am sorry.

By Mr. McGovern:

[826] Q. His testimony had been, at Question 111, When that change of course to port was ordered, how much of a change in course was made? Answer, Well, honestly I can't answer that definitely, but I don't believe it was much over twenty degrees approximately. I say approximately twenty degrees change, maybe not that much.

Then you were asked some other questions and the Coast Guard asked about the change in lights. They said the lights moved from past the bow on the port side over to the starboard hand, and the question is asked, at 114, And the course was sufficient to bring the lights from about three points on the port bow over to your starboard bow; is that correct? And the answer was, Yes, sir; it was evidently more than a twenty degree change. A. That's correct. It was a change to keep clear of him. I didn't give him no certain degree to change course. I just merely asked him, Did he see that white light? I knew what it was because I had been watching it closely, and I asked, I asked him, Did he see the white lights and he said yes. I says, "Put her on the starboard side of the mast and keep her there." And he did so until I ordered him back on the course. That was way after the ship was well clear on my starboard side.

Q. Now was that a considerable period of time? It was more than five minutes? [827] A. Well, I don't know, sir. I couldn't tell you. I didn't look at any clocks. I just navigated, visual navigation. That is what we call visual navigation, and I didn't notice the time, sir.

Q. Now do you know how long you were on that course? A. No, sir, I don't.

Q. Now Mr. Caldwell testified at 115, And how long after that twenty degree change of course to the left was it before you returned back to your course of nine? And

his answer was, After the change to the left, I believe it must have been, well, maybe ten minutes, but no, I don't remember whether it was twenty degrees or what it was. I mean, I mean, I don't mean to imply that it was twenty degrees definitely. I don't remember.

Now as far as I can understand that answer he says it might have been ten minutes. Now how does that accord with your recollection? A. Well, it could have been ten minutes, but it could have been more or less.

Q. Well now, could it have been fifteen minutes? A. I don't know, sir. I told you I didn't know because I didn't watch the clock. I just give it time enough to clear my ship fairly well to the starboard and I considered that fair enough.

Q. Now do you know what time it was that you steadied [828] on your base course of zero zero nine by ship's gyro? A. No, sir; I don't know. It was some time around, after one-fifteen.

Could I have a drink of water, please?

Q. Surely.

Did you blow a whistle when you had made your change in course? A. Which change do you mean?

Q. This is the change of course to the left twenty degrees or more. A. No, sir; I did not.

Q. Did you wake the Captain when you changed the course twenty degrees left? A. No, sir; it is not compulsory to wake the Captain to do things like that. He's got it in his night orders to keep clear of traffic as well as we could, and if we are in doubt, to call him, and I was not in doubt in my mind at all.

Q. Now at some time that you haven't been able to specify, you returned to your base course? A. I can't hear you, sir.

Q. I am sorry. At some time which you haven't been able to specify, you returned to your base course at zero

zero nine. Now in between that time and the time when you made your next change of course, which was to the right, did you receive any reports from your lookouts? [829] A. Repeat that question, sir.

Mr. McGovern: Would you read it?
(The reporter read the question.)
The Witness: Preceding that I did several times.

By Mr. McGovern:

Q. What reports were they, of lights? A. Ships on the starboard side, sir.

Q. Now did you yourself look at these ships on the starboard side? A. Yes, sir; with my naked eye and with binoculars and also checked in the radar.

Q. That's what I wanted to find out.

Now let us get your first check of the ships on the starboard side which you made with your, whichever you did first, whether you did it with the radar or your naked eye, or the binoculars—what was the first time you checked the ships at the starboard? A. Well, as I recall I have told you that I sighted lights all along my starboard side during that night, and I checked with my eye, either with my glasses, the binoculars, and eventually at times I would glance in the radar to see if anything was coming within a danger zone which I considered five miles.

Q. Now what scale was your radar on? [830] A. It was on a fifteen-mile scale, sir.

Q. Now how many PIPs were showing on your radar? A. I did not count them. There was quite a few, and they were all moving from ahead of me to my right, going astern of me, and there was never inside of five miles or five and a half to six miles, inside of those permanent markers on the radar, and I did not count them, sir.

Oliver Francis Riche—for Texas Company—Cross

Q. Well, now where were you standing when you directed the course change to the right? A. I was standing, that was the second change—I mean the second, not a change of course—it is an alter course.

Q. All right. The second alter course. The first one you altered to the left to let this man who was the burdened vessel by? A. That's right.

Q. Now the next time you changed course to the right? A. That's right.

Q. Now it's that second that I am interested in now. A. Well, I was standing close to the center porthole.

Q. And what did you see through the center porthole? A. Well, I saw two red lights, almost ahead. One appeared very much closer than the other, with the same plane, and the other a little bit more on the right and further away, almost dead ahead.

Q. Was that the first time when you yourself saw these [831] red lights? A. Colored lights; yes, sir, with the exception of that one green light receding there.

Q. You saw this through the glass of the porthole? A. I saw the red lights through the glass of the porthole with the binoculars and with my eyesight too.

Q. Now when was the last time you had been out on the open wing of the bridge before that time? A. Well, sir, I couldn't account for that because I walked clean across the ship, back and forth, while I'm on watch continuously, and I don't very seldom stop to one certain place and stay there. We move about all the time.

Q. But you had not sighted these lights when you were on the open bridge, the colored lights? A. I did not see those two red lights before. I told you I did while I was standing right in the middle of that porthole.

Q. Now what, if anything, did you say to the helmsman at that time? A. I told him to right a little.

Q. Now what did you mean by that, or what did he understand you to mean by that? A. Well, he brought the ship to the right. He asked me, you mean by the compass. I said, I told him to right a little, and he asked me something concerning how many degrees, [832] or so, and I said, "What are you on now?" He did right and then I says, "What are you on now?" He says, "Twenty-three." I says, "Well, that's good enough. Hold 'er there steady as she goes." And I kept asking him, "What are you on now?" because when you're steering a ship by hand, it sways back and forth slightly and I wanted to know what he was on and he kept telling me twenty-three, twenty-three. I said, "Very well."

Q. Now how close did the red lights appear to you to be when you first saw them through the glass porthole? A. They appeared very close.

Q. Within a mile? A. I don't know, sir.

Q. Within a half a mile? A. I don't know, sir.

Q. Within a quarter of a mile? A. I still don't know. I couldn't tell you how close those lights were. They appeared very close.

Q. I am trying for our assistance to find out within two hundred yards. A. Well, sir, the lights was dead ahead and they appeared close to me, being on a dark night when they first popped out like that, they appeared close to me, and I don't know what distance they were away from me.

Q. You did not make any estimates? A. No, sir; I didn't try to. I give them the right-of-way. [833]

Q. Now, did you blow any whistle when you changed course to the right? A. No, sir; I did not. I didn't change course to the right. I altered course to the right.

Q. You altered course? A. That's right.

Q. From zero zero nine to o two three? A. That's what we call visual navigation.

Oliver Francis Riche—for Texas Company—Cross

Q. Did you call the Captain when you made that change of course? A. No, sir; I did not.

Q. What time was it that you made that change? A. Sir?

Q. What time was it you saw these two red lights and made that change? A. Well, I don't know, sir. It wasn't —I can't specify no exact time. I know it was after two o'clock.

Q. You— A. Because four bells struck in the wheelhouse at two o'clock.

Q. How much after two o'clock? A. Well, it could have been a little after two o'clock.

Q. Could it be two minutes after two? A. Well, I think it would be between two and five minutes [834] after two. I don't know the exact time.

Q. Now how long did you remain on that course of o two three by gyro? A. Well, sir, assuming that the accident occurred approximately at zero two-thirteen, I would say anywheres from seven to twelve minutes.

Q. Now did you make any further change of course before the collision? A. I never did change course. I altered courses.

Q. Oh, all right. You make any further alterations of course before the collision? A. Before what?

Q. Before the collision? A. No, sir.

Q. Didn't you change course to the left? A. No, sir; I didn't change course.

Q. Did you alter course to the left? A. Yes, slightly. I started to my left.

Q. When did you alter course to the left? A. When I saw the third red light.

Q. Which was how long before the collision? A. Approximately thirty seconds.

Q. Now where were you standing when you saw the third red light? A. In the same place, in that porthole.

[835] Q. Looking through the glass porthole? A. Yes, sir.

Q. Now where had you spent the intervening time between seeing the first two red lights and the last third red light, which was the light of the vessel with which you collided? A. Well, at the usual place there where you would stand when you're doing visual navigation, right close to the quartermaster where you can observe the different bearings at different angles and also give orders to the wheel.

Q. You stated you stayed in the wheelhouse then? A. Yes, sir.

Q. You did not go out to the wing of the bridge? A. Before the collision?

Q. That's right. A. You mean—what do you mean?

Q. Did your go to the open wing of the bridge in between the time?

The Court: We cannot hear you.

By Mr. McGovern:

Q. Did you go to the open wing of the bridge in between the time that you saw the first two red lights, the one you saw through the glass porthole and the last red light which was the red light just before the collision? A. I don't recall going on the wing of the bridge during that short period. I was standing there taking up, [836] observing the bearings on the lights and giving orders to the quartermaster.

Q. What time was it that you saw the third red light? A. Well, I think it was approximately, it could have been at zero two eleven and a half, or zero two eleven, something like that. I already told you from seven to twelve minutes before the collision.

Oliver Francis Riché—for Texas Company—Cross

Q. Now you saw the first pair of red lights about between two and five minutes after two; is that correct? A. No, sir; I did not see a pair of red lights. I saw two individual lights.

Q. I am sorry. You saw two individual red lights between two and five minutes after two; is that correct? A. Yes, sir.

Q. And then you stayed in the same place or approximately in the same place, and next saw one red light about a minute or less than a minute before the collision? A. Less than a minute before the collision. That's right.

Q. Now during this period of time had you been receiving any reports from your lookouts? A. Yes, sir.

Q. What were the reports which you were receiving from your lookout? A. Reporting bells, lights.

[837] Q. What bells were they? A. There was some for the port and some for the starboard because there was vessels on both sides of us.

Q. I am particularly interested because Mr. Upton's testimony, which is in this case—

The Court: Take a short recess, Mr. Marshal.

(After recess.)

(The witness resumed the witness stand.)

By Mr. McGovern:

Q. Mr. Mate, I am reading from Upton's Coast Guard testimony at Question 405, and the question is, When was the last time before the collision that you had any bell signals indicating ships on your port side, if you had any? And the answer, Well, I'd say something around one-fifteen.

406 Question, That is the last time you recall seeing any ships on your port side or ringing a bell for ships on your port side? Answer, Yes, sir.

Now is that a correct report? A. That could be correct; yes, sir, but I couldn't see them. I could—I was up

higher than he was and I could see some white lights quite a ways off on the port side, sir.

Q. But as far as your lookout was concerned from one-fifteen on, reported only lights on the starboard side? A. I don't know what he saw. I know what I saw, sir.

Q. I am asking what he reported to you. [838] A. I don't remember what he reported. I recall him reporting ships on both sides, more of them on the starboard side.

Q. Now I go back to his testimony, and the question is 286, This ship you say that you saw at about two A. M., about three points off the starboard bow, you gave one bell. This was the same ship, are you certain; that you had again reported a few minutes later? Answer, I reported the same light twice.

Question, That you reported the first about two A. M.? It was something a few minutes before.

Question, A little before two you reported it the first time and that's when she was off your starboard bow? Answer, Yes, sir.

Question, Then a few minutes later you reported the second light, or you reported this same light a second time? Answer, Yes, sir.

Question, Do you remember how many minutes there were in that interval? Answer, I'd say around ten minutes.

Question, And then from the time that you reported a second time about how long was it until you began to ring the bells as fast as you could as she was coming in on you? Answer, Well, it was when I could just see the bow of this ship.

Now did you receive these reports by bell from Mr. Upton, the bow lookout? A. I received bells on the starboard bow by Mr. Upton, [839] but which one he was referring to when he was ringing the bell, I do not know, sir. I could see much more lights than he could on the starboard side, and I do not know which individual light

he was referring to when he kept reporting, he claims, the same lights all the time because there were many white lights on the starboard side, sir.

Q. Well, now, I apparently forgot to ask you a question I should have at a previous date. I am going back to your alteration of course, the one where you went right to o two three. Now did you blow a whistle at that time? A. No, sir; I already answered you that question.

Q. I thought you had too, but people back there didn't hear us, A. Well, I said no.

Q. I am sorry for taking your time. A. I said no, I did not.

Q. Then we go to the third alteration of course which was to your left. Now did you blow a whistle when you changed course to your left, altered course to your left? A. Sir, I was going approximately zero twenty-three when I saw the third red light, before I saw that third red light which was very close on my starboard side when I did see it. I was on course zero zero twenty-three, shortly after I looked on my port bow, and I saw that the two red lights that had passed from my starboard to my port was well clear, I [840] started back. I gave an order to come back on the course and at that moment I saw that third red light popped over real close to my starboard bow at a terrific speed. I said then hard left and I run to the port wing of the bridge. I sounded two blasts of the whistle followed by several short blasts, and hollered the second time, Hard left, and he then told me, "She's hard left." And that's when the collision occurred; sir.

Q. Now, sir, there is only one other matter that I will take your time up with and that is your radar. When was the last time that you looked in the radarscope before the collision with reference to the three points that we have been examining you on? A. Well, I would say shortly before four bells in the wheelhouse, or two o'clock.

Q. Just before two o'clock? A. Shortly before two o'clock.

Q. Now what was the situation as shown in your planned position indicator at that time? A. I didn't understand the question, sir.

Q. What was the situation shown on your scope? You had a P. P. I. scope on your radar? A. Yes, sir; that's right.

Q. What was the situation shown on your P. P. I. scope? A. There was targets way off on the port side and there [841] was several targets well off on the starboard side, all moving towards my stern respectively.

Q. How near was the closest target? A. The closest target was well abaft my beam and it was approximately five and a half to six miles off.

Q. Now how close was the nearest target which was forward of your beam on the starboard side? A. I'd say well over six miles.

Q. Now do you have any explanation of why your radar didn't pick up the Ruchamkin? A. I don't have any explanation; no, sir.

Q. How was your sea return; were you having any? A. Very, very little on fifteen-mile scale because there was no sea.

Q. And there were no ships really close to you to show it on your scope? A. I already stated, sir, that there wasn't anything within five and a half to six miles, was the closest one, sir.

Q. I was only asking that with respect to the sea which is turned up by a nearby vessel. A. Well, I couldn't see any in there; no, sir.

Cross-examination by Mr. O'Connell:

Q. Mr. Riche, at any time prior to the collision did you have any reason to believe that the ships off on your [842] starboard were naval ships? A. No, sir.

Q. You had no knowledge by visual signals or anything like that that the ships over there might be naval ships? A. No, sir. I don't see where anybody could tell a naval ship at nighttime from a merchant ship when they all carry the same lights, or supposed to. I don't know any reason why I should know it, it was a naval ship.

Q. Any time after o two o o, after two o'clock, do you remember whether you received any sort of a signal light, a blinking signal light off to your starboard? A. Yes, sir.

Q. You noticed a blinking signal? A. Yes, sir.

Q. And where did you think that came from? A. I was standing at the moment that I saw that blinking signal light approximately in the middle of the wheelhouse glancing over to my starboard through the starboard porthole well abaft my beam. I saw a blinking light sending a message, AAA, which means attention.

Q. And from what type of a ship did you imagine that came from? A. I don't know, sir. It was very dark. All I could see was the side of the light that was blinking.

Q. You just saw the side of the lights? [843] A. The side of it. It would seem like to me it was pointed in another direction, but I thought they probably meant me so I plugged in my portable key and answered him three or four times and he didn't respond so I took it for granted he was talking to someone else.

Q. Now that portable key, could you just very briefly describe what the setup was, the make-up of it? A. It is an extension cord with a key on it that you can move from one side of the bridge to the other through the wheelhouse.

Q. From one side of the bridge to the other? A. Yes, sir.

Q. How long is that extension cord? A. Well, I would say it is approximately one-third or maybe a little bit more than the width of the ship.

Q. All right. Now when you blinked back were you in the wheelhouse? A. No, sir.

Q. Where were you blinking back; where were you standing? A. I was to the starboard wing of the bridge.

Q. Starboard wing? A. Yes, sir.

Q. Could you see from what, as you stood on the starboard wing, could you see what direction this AAA came from? [844] A. Well, it seemed to me it was coming from abaft my beam from some ship. I don't know which ship it was, or who it was because he never did answer me and I just dismissed it, as he wasn't talking to me. So I didn't pay any more attention to it.

Q. At the time you received this blinking AAA, you thought it was, they were trying to get your attention? A. Well, they could have been; yes, sir.

Q. Right, and you attempted to signal back by this means of this blinker? A. I intended to answer him.

Q. Did you, could you tell the Court where the light, the blinker light was that you— A. The blinker light is situated on a yard arm over the bridge of that certain ship. At that time it was a white light visible all around the horizon.

Q. Did you notice whether this light was working? A. Yes, sir; you could see. It illuminated the ships, the wing of the bridge when I'd press down to the key, when the key would make contact.

Q. You didn't look up? A. No, sir; that was sufficient enough, because it would illuminate the wing of the bridge where I was, sir.

Q. What type of a signal, what was the signal that you gave back? [845] A. I answered with AA.

Q. You gave them AA? A. That's right, several times.

Q. And you didn't get any response to that? A. That's right.

Q. Now how long a time was consumed in this receiving the signal or blinking back? A. Well, I don't know how long he signaled after that because I didn't pay any more attention, but I would say I took approximately fifteen to twenty seconds, something like that. I decided he didn't answer me and I took it for granted he wasn't talking to me. He meant somebody else.

Q. You said the total time was consumed in plugging in the blinker? A. My time, not his, because I didn't pay any more attention to him.

Q. The whole time that you consumed in plugging in the blinker light and going out to the starboard wing? A. Sir, the blinker light was already plugged in it. It was laying right there for me. I just picked it up and walked on the wing of the bridge.

Q. Just fifteen seconds? A. Well, that's a rough estimate. I didn't take any time of it. I don't say it's fifteen seconds.

Q. Well, could it have been two or three minutes? [846] A. No, it couldn't.

Q. It was definitely less than a minute? A. Yes, that's right.

Q. You gave your signal and you waited a short time? A. No, sir; I answered him in the proper manner. Whenever anybody sends attention, which is a de da, I answered him de da. I'd de da again and no answer.

Q. So giving the de da took five seconds? A. No, sir; it just merely takes a little, less than probably a second for one de da, probably one second.

Q. Would you have consumed three seconds in giving the, depressing the key? A. Yes, sir, approximately, maybe.

Q. Then you waited twelve more seconds? A. I waited —no, sir; I waited in between answers to see if he would want to say something. He didn't say anything.

Q. Total time you used up was fifteen seconds? A. I didn't say fifteen.

Q. Approximately? A. Approximately.

Q. Approximately. You waited twelve more seconds before you went back to the wheelhouse? A. Well, sir, I was concerned with the ships ahead. I mean on my port and starboard side and I was watching bearings on them to see, make sure that they were always changing to my [847] right and my left so there would be no danger of them wanting to cross my bow and I didn't take more time than I could afford on account of that.

Q. But that blinking light, you didn't get the impression it was from a Navy ship? A. Certainly not, because we talked to merchant ships all the time.

The Court: What was the bearing of that blinker?

The Witness: It was approximately a point and a half to two points abaft my beam. I glanced when I first saw it, it was through my starboard porthole, your Honor.

The Court: Approximately what was the range of it?

The Witness: Well, I would say maybe it could have been six miles off.

The Court: And did you fix the time?

The Witness: No, sir; I did not, sir, because it's dark in the wheelhouse and I didn't notice any time at all, being he didn't answer, I didn't.

The Court: Was it after you had seen the two red lights dead ahead?

The Witness: No, sir; it was quite a bit [848] previous to that, sir.

Oliver Francis Riche—for Texas Company—Cross

By Mr. O'Connell:

Q. It fixes the time the man at the wheel was Smith, was he not? A. No, sir.

Q. At the time you signaled back the man at the wheel was not Smith? A. No, sir. Absolutely not.

Q. Who was the man? A. Mr. Caldwell was the regular man at the wheel.

Q. Mr. Caldwell; you're sure of that? A. Yes, sir; I am positive.

Q. You are positive it wasn't Smith? A. That's right.

Q. Now, Mr. Riche, when did Mr. Smith come on watch to take over the wheel? A. You mean when did he come up to relieve the quartermaster?

Q. To relieve the quartermaster. A. At two o'clock.

Q. So then he was on from two o'clock until the collision? A. Yes, sir.

Q. Now is Mr. Smith's testimony, has been admitted in evidence and I'm reading from page 33:

[849] Question: Did any vessel appear to signal to you before the collision?

Answer: Yes, there was a vessel trying to signal. Whether it was to us or not I don't know. I think the mate figured it was, maybe.

Question: When did this signal first come in?

Answer: Well, that was a good while before the collision.

Mr. Brush: That was a right good while.

Mr. O'Connell: A right good while, I'm sorry.

Question: About two o'clock?

Answer: It may have been a little after two, two or three minutes after two.

Question: Not as much as five minutes after two?

Answer: I don't think so.

Oliver Francis Riche—for Texas Company—Cross

Question: From what side did this signal appear to come?

Answer: It was on the starboard side.

By Mr. O'Connell:

Q. So then Mr. Smith's testimony is that this signal was made after he was on watch? A. No, sir; not that certain one; no, sir. If he says that, it is wrong.

[850] Q. He is wrong? A. Yes, sir; because he was not at the wheel when that certain signal—he probably, lots of times, when a ship is crossing our stern or way back of us, and they are standing lookout back there, also they are on standby watch, they see somebody flashing a light, they come up and tell us that there's a light flashing back there, and he might have seen a light flashing back there, but he did not see that certain light that I explained to you after two o'clock or anywhere close to two o'clock.

Q. Well, were there two times during the night that you used the blinker key? A. There was—I don't know how many times we used it. We used it after the collision.

Q. No, I am talking about you yourself during the watch before the collision. You came on at twelve and the collision was approximately two-thirteen; is that correct? A. Yes, sir.

Q. During that period of time did you use the blinker key twice? A. I only used it once, the time I just explained.

Q. Just used it once? A. That's right.

Q. Now I will continue reading from Mr. Smith's testimony, page 34.

[851] Question: How do you know he figured that they were trying to signal?

Answer: Because he tried to make contact with them, see.

Question: Tell me about that.

Answer: He used the blinker key for a while.

Question: Where was the blinker key?

Answer: I believe he had a portable key there plugged in that he used.

So it seems that Mr. Smith's testimony is that he was there and he saw you use the blinker key? A. Mr. Smith was there from two o'clock to the time of the collision and we did use the blinker key after two o'clock and after the collision.

Q. So it is now your testimony that— A. I said—

Q. That the time Mr. Smith is talking about was— A. Is a different time than I am talking about altogether.

Q. After the collision? A. That's right.

Q. All right. I will continue reading from page 35.

Question: How long would you say it was between the signaling and the collision?

Answer: How long between the end of the [852] end of the signaling and the collision?

Question: Yes, well, I guess it was about ten minutes. Mr. Smith.

—The answer was, Well, I guess it was about ten minutes.

Question: As much as ten minutes?

Answer: I think so, yes. It wasn't much after two o'clock before I mean—when he first started signaling with him, you know.

So Mr. Smith definitely says that his recollection, it was before the collision? A. Well, my recollection is just like I have explained to you, sir, and I do not know any answer that I could give you to help you out in any way.

Q. So your testimony is that Mr. Smith was wrong? A. No, sir. I did not say that.

Q. Your recollection differs from Mr. Smith's? A. No, sir; I did not say that, either.

Q. Would you just tell me? A. I said that if Mr. Smith is talking about the same light that I was referring to, it was well before two o'clock, and that if he was not talking about the same light that I was, it was at the time after the collision when we did use the blinker key. That's what I said.

Q. But am I correct in stating that Mr. Smith says it [853] was after two o'clock and before the collision, his recollection of it—

The Court: Well, that is what the deposition says.

The Witness: The deposition might say that, but we are not talking about the same light.

By Mr. O'Connell:

Q. Mr. Riche, just briefly, you had a bad cold, I believe, had been brought out while you were on watch? A. No, sir; just about like I got now.

Q. Did you take any kind of a medication for it, aspirin, anything else? A. No, sir; I did not.

Q. After the collision I believe Captain Cain has testified that he gave you a sedative; is that correct? A. Well, it was a long while after the collision.

Q. Well, could you state approximately when it was? A. No, sir. After the collision, after we got under way, I wasn't hungry and I was supposed—it was time for me to eat. I wasn't hungry, so I didn't eat. And then he came by to see how I was doing and how I was getting along, asked me how I was feeling. I said, "I'm feeling fine." Well, he says, "Why don't you lay down and get some sleep?" I says, "I can't sleep right now." Well, he says, "You think if I'd give you an aspirin," he says, "I need one myself. You think [854] if I'd give you an aspirin

that it would help you?" I said, "Yes, probably so." So he went and got, he says, a phenobarbital and gave it to me, but that didn't do me any good. I didn't go to sleep until quite a while later.

Q. What's the time; could it have been the time that the Captain gave you this phenobarbital pill, before you went off watch? A. No, sir.

Q. Wasn't before you went off watch? A. No, sir; it was well after I went off watch.

Q. Well after? A. Yes, sir.

Q. Could you say approximately how long after? A. No, sir; I could not.

Q. Mr. Riche, I am referring to your Coast Guard testimony on page 185, Question 221, the question, At the time you made these entries in the rough deck log would you say that you were fairly calm and collective? Answer, No, sir. I didn't get calm and collective until quite a bit after. I had a sedative. I was nauseated a little bit and a bad cold.

The Court: Has not that been covered sufficiently, Mr. O'Connell? It all happened after the collision, whether he took aspirin or whether he took phenobarbital and as for the entry in the rough log, it is a very scant entry anyway, so why [855] spend all this time on it?

Mr. O'Connell: All right, your Honor. I will try to speed it up. I am just trying to refresh the witness' recollection as to when—

The Court: He has been over that some two or three times. He does not know exactly when he took the phenobarbital, so I think you had better leave that.

Mr. O'Connell: All right, your Honor, I will try to finish up.

Oliver Francis Riche—for Texas Company—Cross

By Mr. O'Connell:

Q. Are you responsible with the making of the log entries in the ship of this watch? A. No, sir; of my watch, yes, sir.

Q. You were here when Captain Cain testified before; is that right? A. Yes, sir; I was here.

Q. Captain Cain testified that you made the log entries. A. On my watch.

Q. On your watch. Now when were these log entries made? A. Just when Mr. Reid, the chief officer, relieved me.

Q. That was when? A. At four o'clock. I said I was on the twelve to four watch.

Q. You made the log entries about four? [856] A. Approximately four o'clock. I read the temperature and courses.

Q. Had you made any notations after the accident from which you referred to when you made your log entry? A. No, sir.

Q. So you made the log entry from your memory? A. It is a general practice, unless there is a lot of bells involved; we always use a bell book then.

Q. Am I correct in stating then, Mr. Riche, that you, when you made the log entry, did not know the name of the vessel or ascertain the name of the vessel with which your ship had collided with? A. No, sir; I tried several times to find out the name of the vessel.

Q. Tried to find out? A. Yes, sir. They did not give it to us.

Q. The naval officers on board, did you ask them? A. I asked them; yes, sir.

Q. They wouldn't give it to you? A. They didn't give me any name.

Q. I mean you asked them and they didn't give it to you? A. That's right.

Q. Now when the practice, I believe normally is when you're going off watch also to make a notation in the radar log? [857] A. That's right.

Q. Radar was on? A. That's right.

Q. Made no entry about that radar being on? A. I did not.

Mr. O'Connell: That is all.

The Court: Is there anything further?

Mr. Crenshaw: We have no further questions.

The Court: Let him stand down. Let him be released.

* * *

Deposition of James L. Smith

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

In Admiralty Nos. 953 and 954

THE TEXAS COMPANY, as owners of the Tanker WASHINGTON,

Libellant,

v.

UNITED STATES OF AMERICA, as owner of the U.S.S. RUCHAMKIN, etc.,

Respondent.

DEPOSITION of JAMES L. SMITH, taken on behalf of The Texas Company, Libellant, pursuant to notice, before Philip H. Burt, a Notary Public in and for the Commonwealth of Massachusetts, at Room 601, 31 Milk Street, Boston, Massachusetts, on Monday, August 29, 1955, commencing at 2.30 p.m.

Present:

MESSRS. THACHER, PROFFITT, PRIZER, CRAWLEY & WOOD, (By JOSEPH M. BRUSH, Esq.), 72 Wall St., New York 5, N. Y., Proctors for The Texas Company.

THOMAS F. MCGOVERN, Esq., Admiralty and Shipping Section, Department of Justice, Washington 25, D. C., Proctor for United States of America.

Deposition of James L. Smith—Direct

STIPULATION

It is stipulated and agreed by and between proctors for the respective parties that the reading and signing of the deposition by the witness are waived.

JAMES L. SMITH, having been duly sworn, testified as follows in answer to direct interrogatories by Mr. Brush:

Q. Mr. Smith, where do you live? Have you a shore address? A. R.F.D. 3, Laurel, Delaware.

Q. Are you married? A. Yes.

Q. Do you have any children? A. Two.

Q. How long have you lived in Laurel, Delaware? A. Well, all my life. I was born and raised in the same place.

Q. What is your occupation? A. Seaman.

Q. How long have you been going to sea? A. I have got about fifteen years sea time.

Q. How long have you been married? A. Since '41.

Q. Have you lived at the same address for a number of years? A. Well, yes, except—'44 I moved down there. I was up in New York for a while. When I first got married, I had an apartment there.

Q. But, since 1944 or thereabouts, you have resided at the same address? A. Yes. And before that, before I was ever married, I had the same address. I had been there all my life at the same address. I live now the same place I did before I was married.

Q. Do you have a ticket or a license of any kind? A. A second mate's license, yes, ocean.

Q. In November of 1952, were you a member of the crew of the Tanker Washington at the time she had a collision with the Navy Destroyer, U.S.S. Ruchamkin? A. Yes.

Q. Do you recall now where and about when you joined the Washington? A. November 1, 1952.

Q. And in what port? A. Newburgh, New York.

Q. What was your position on the Washington? A. AB.

Q. What watch did you have? A. The 12 to 4 watch.

Q. Will you tell us in a general way what your duties were on the Washington? A. Well, the 12 to 4 watch, the AB has the first lookout from 12 to 1, and then he is relieved by the ordinary seaman. He goes back and has a break until 2 o'clock, when he relieves the quartermaster for a half hour. The quartermaster is relieved for a half hour for coffee, or rest period rather. Then at 3 o'clock, he is supposed to relieve the lookout until 4.

Q. On the night or morning of this collision, did you go on watch at midnight or thereabouts? A. Yes.

Q. And where did you first stand your watch? A. On the bow—forecastle head, they call it.

Q. Did you relieve a man who was lookout at that time? A. Yes.

Q. When you went up on the bow at midnight, what was the weather like? A. The weather? Oh, the sea was smooth and the visibility was good.

Q. Do you recall now about where the Washington was at the time? A. Well, between Cape Henry and Cape Hatteras.

Q. Do you recall also whether she was light or loaded? A. She was loaded.

Q. Is the Washington what is commonly known as a T-2 tanker? A. That is right.

Q. Do you remember now where the Washington was bound? A. Philadelphia.

Q. How long did you remain on lookout up on the bow? A. One hour, from 12 to 1.

Q. During that period, did anything unusual occur? A. No. No, nothing unusual.

Q. Did you have a practice on the Washington to report lights that you observed? A. Oh, yes.

Q. What was that practice? A. Well, it is the routine practice on most ships by bell signal.

Q. And what do you do? A. That is when you are on the forecastle head where there is a bell. Otherwise—

Q. Yes. A. Well, one bell is starboard, two to port and three, dead ahead.

Q. And then, is there any practice about receiving a reply from the bridge? A. Yes, the mate usually hollers out, "Very well", to recognize the bell. Of course, when you are way up on the forecastle head with no other communication, sometimes you can't always hear.

Q. Is that the common practice on most ships? A. That is common practice if you are on the forecastle head.

Q. Now, when it came around to 1 o'clock and you went off watch, who relieved you? A. One o'clock, Ordinary Seaman Upton.

Q. When you relieve each other or when you did relieve each other or he relieved you, did you have any conversation and, if so, tell us what the substance of it was. A. Very little conversation, except just on line of duty. I report the lights to him, tell him where they are at—some on the port and some on the starboard—and I told him at that time that I thought that they must be Navy ships.

Q. Do you remember now where the Washington was about 1 o'clock? A. The location, you mean? The latitude?

Q. Yes. A. Well, she was a little south of Cape Henry, a right good ways offshore and, actually you couldn't see no land.

Q. Are you familiar with the approximate speed of the Washington at that time? A. Well, yes. Running full speed, a T-2 should make between 14 and 15 knots.

Q. And is it your recollection that the Washington was making about that speed during your watch as lookout that night? A. Yes. Yes, I would think so—full speed.

Q. When Upton relieved you, did you tell him that there were some lights on the port and on the starboard? A. Yes.

Q. And did you also tell him that you had reported those to the bridge? A. Yes.

Q. Thereafter, what did you do? A. Thereafter, when I left there, it was fairly chilly that night and I don't think I was out on deck too much. I was just around the mess room waiting for a call, if they need you or anything, and I didn't see anything going on until 2 o'clock.

Q. When Upton relieved you at 1 o'clock and you pointed out these lights on the port and on the starboard, were any of those lights close by? A. No, no. They were six or seven miles away, at least.

Q. Did you remain aft until 2 o'clock or thereabouts? A. Well, about seven minutes of 2, I started to walk up to the bridge. You always relieve a little bit ahead of time, or try to.

Q. Do you remember now what route you followed or how you went up there to the bridge? A. Well, I went up on the—just left, and went up on the main deck, up into the midship bridge and then walked around on the starboard side and went in the door.

Q. As you proceeded from aft up forward to the bridge and thence into the starboard door of the bridge, did you observe any lights close by? A. No. No, there wasn't anything real close by.

Q. I take it then you went in and relieved the man at the wheel? A. Yes.

Q. And what was his name? A. Caldwell.

Q. Where was the wheel on the Washington located with respect to the forward bulkhead of the pilothouse? A. It is right in the center of the wheelhouse.

Q. And about how far abaft of the forward bulkhead portholes would you say? A. Oh, it is about seven feet.

Q. And where did you stand your watch, in front of or behind or how? A. Oh, behind the wheel, naturally.

Q. Do you stand or did you stand on a little platform of any kind? A. Yes, yes, a grating.

Q. Do you remember now, as you took over the wheel, what course the Washington was steering? A. 9, 009.

Q. And would that be true, gyro, or what? A. True gyro heading.

Q. By the way, who else was on watch at that time in the pilothouse? A. The mate. Riche was the mate on watch, second mate.

Q. Was there anyone else in the pilothouse? A. No.

Q. Thereafter, until the collision occurred, did anyone come into the pilothouse before the collision? A. No.

Q. Let us take your watch at the wheel. When you took over, you said it was on 009. Did you, after that receive any orders from the mate to change that course and if so, just tell us what those orders were? A. Oh, I wasn't up there long before he evidently saw some ships ahead or close on the port and he wanted to go right, so he says, "Right". Oh, "Right 10"—10 degrees. Yes, and I put the wheel about 15 degrees right, and I said, "Well, do you mean the compass or the rudder?" He said, "The compass." But then he says, "Midships", and then he wanted to know how I was headed when he said, "Midships" and I said, "25". So then she started to swing back again, which 19 should have been the course at 10 degrees to right, so he wanted to know again. I says, "24", or thereabouts, and we finally got around to 23 and he says, "Well, keep her on 23". So, we kept her on 23 for a while and then I suppose, when he got everything clear again, we come back on the course again, 009.

Q. Now, in the pilothouse at nighttime like that, is there a clock visible to you? A. Yes, there was a clock up on the starboard bulkhead.

Q. Could you see it in the dark or did you have to turn a light on? A. No, I could see it.

Q. Have you any idea of how long you were on 23? A. I think about five minutes.

Q. And then you received instructions to go back on 9? A. Yes.

Q. And what did you do? A. Well, I put the wheel to left and went back to 9 and then, when we got on 9, steadied up and go right along.

Q. During the time that you were turning to 23 and remained on 23, did you observe any lights of other vessels? A. No, no. I couldn't see very well out there.

Q. And then, when you got on 9, did you ever steady up on 9? A. Oh, yes. That was the course from then on, 9.

Q. After you had steadied on 9 then, I take it something occurred. Will you tell us what occurred, or how long were you on 9? A. Well, I was on 9 up until the time he gave the order, "Hard Left", to try to avoid the vessel. Yes. Well, he evidently saw a bunch of Navy ships over on the right—ships, rather; we will call them ships—over on the right, and he did make a remark about their coming this way. So, I started to look out of the porthole, naturally, as much as I can and then finally I see this red light through the starboard porthole, and just about that time he says, "Hard Left". And I made the remark, "It is right on top of us," but he wasn't paying no attention to that anyhow. The order was already given, "Hard Left". So, when he went out onto the port wing of the bridge, he says, "Hard Left", again. And of course I said, "The rudder is hard left," but I even stepped off the platform to have more purchase on the wheel, see, to get it over in a hurry.

Q. When he made this comment about the ships seem to be coming closer this way, you were then on 9? A. Yes.

Q. Had gotten back on 9? A. Yes, at that time we were back on 9, I guess.

Q. Did you ever see any colored lights on the ships that seemed to come closer to you? A. No, the only light I saw was that red light through the starboard port hole. That was a red line kind of thing, see.

Q. Was that far away or close to you? A. Oh, that was very close.

Q. How did it seem to be traveling, slow or fast? A. Well, it didn't seem to be traveling too fast at that particular time. Of course, it was practically 90 degrees on the bow at that time, anyhow. He was going right straight across. I don't mean—wait a minute. I mean—say, here is the bow over here (indicating). In other words, he was about 4 points from there, speaking of the compass. But then he was—it was about a triangle, you see. He was 4 points this way, but he was very close on the bow. That is what I mean by 90 degrees. When I say 90 degrees, that sounds as if the ship was abeam of us, speaking of the navigation equipment. That is what you always figure your bearings from, your navigation, the compass.

Q. When the mate apparently observed this light, you say he went out on the port wing? A. Yes. He went out on the port wing at the same time he said, "Hard Left".

Q. And then what happened? A. Well, then I could see through the forward port. You see, we have got three ports, and I could see through the forward port then and I saw the ship. He didn't seem to go right. He seemed to go right straight across and you were wondering why you didn't make contact sooner than you did. He did get half way across, about midships, before we made contact, and we were swinging left all the same time.

Q. And how were your engines going? A. Well, the engines were going the same speed ahead all the time.

Q. Until what time? Were they ever changed? A. Well, they weren't changed until after we made contact.

Q. About how long after? A. Well, just as long as it took him to get back from the wing of the bridge and reverse the engines; half a minute, I guess. That is about all.

Q. Did your ship sound any whistles, do you remember? A. Yes, sounded short blasts.

Q. About how many? A. Four or five short blasts.

Q. And when were those whistles sounded with respect to the order that you got? A. That was sounded just after he says, "Hard Left", and before the ships collided, just a very little while before.

Q. Do you remember now what the heading of the Washington was when the ships came together? A. No, I don't know exactly the heading at the time they came together, where we were swinging left on this 9 degrees. She hadn't swung very far, anyhow.

Q. Now, Mr. Smith, there has been some ligitation pending here for several years. Tell me, when was the last time before this morning that you saw me? A. The last time before this morning? Well, the last time was in Mr. Schwartz's office, whatever time that was. Let's see. I don't remember.

Q. Whatever that date was? A. I don't remember the date. Do you know?

Q. I don't remember now. A. That was the last time I saw you; when you were in Mr. Schwartz's office there in New York. It has been two years ago, I guess. Well, this was November of '52. How long has that been ago, now? November of '55 will be three years, won't it? Well, two years ago.

Q. Now, tell us, since this collision, what have you been doing? A. Well, that is getting pretty personal. In fact, for the last four months, I think they have been checking up on me close enough. I have not been robbing no banks.

Q. I don't mean of a personal nature. Have you continued to go to sea? A. Oh, is that what you mean?

Q. Yes. A. That is the only thing I have made anything at, anyhow.

Q. What companies have you worked for? A. Let's see. I think the President Lines, American President Lines. Oh, Warren Petroleum Corporation; then this National Bulk Carriers.

Q. How long have you been working for the National Bulk? A. Well, it lacks two days of being six months now.

Q. Have you been sailing up and down the coast on their tankers? A. I have made a couple of trips foreign during that six months, one to England and one to the Azores.

Q. At the present time you are on the Tanker Virginia of the National Bulk Carriers, are you not? A. Yes.

Q. And how long have you been on that vessel? A. Well, it is six months.

Q. And now, are you an AB on that vessel? A. Yes.

Q. Did I come out to your ship this morning in a launch and ask you to come ashore to give your testimony in this case? A. Yes.

Q. Since I last saw you in Mr. Schwartz's office, have you been in contact with Mr. Schwartz? A. I saw him once.

Q. Where was that? A. In Tiverton, Rhode Island.

Q. And have you also been in contact with a person representing himself to be a Government attorney? A. Yes. That was the same place.

Q. In the same place? A. Yes.

Q. Do you remember what his name was? A. I can't think of it now—Kopper.

Mr. Brush: May we stipulate, Mr. McGovern, that his name was Koppel?

Mr. McGovern: Yes.

The Witness: I don't remember the name, but I think that is what it was.

Q. Since this collision occurred, have you been interviewed by Mr. Schwartz or Mr. Sterling, his former partner, and have you given them a statement about the circumstances of the collision? A. No, the last time I was interviewed was the time that you were there, two years ago.

Q. And at that time you gave them a statement about the circumstances, or they asked you some questions and the stenographer took it down, was that right? A. Yes.

Q. Did you give a statement to the Government attorney? A. No.

Q. Did he interview you about the circumstances of the collision? A. No.

Q. What was the substance of his conversation in Tiverton when he saw you? A. Well, it seemed to be—the main thing was to get off the ship, you know, and this, that and the other. There weren't much said about the collision. That is what kind of surprises you, how people go so far to say so little. You get to studying about it and you wonder how ignorant you are or—(pausing).

Q. You kind of wondered why he came all the way to Tiverton, I suppose? A. Yes, that is right. Also, one of them was from Texas, you know.

Q. One of them was from Texas? A. Yes. The only thing they were speaking about was more or less when the case was coming up and when you could get off the ship, and this, that and the other. But, as far as talking much about the collision, there wasn't much said about it.

Q. Have you been in more or less regular communication with Mr. Schwartz? A. I have been calling him, yes.

Q. At his request? A. Yes, at his request.

Q. If I understand it, he has asked you to call him whenever you got in port? A. Yes.

Q. And that would be to call him at his expense? A. Yes.

Q. And what did he want you to do, tell him where you were and what you were going to do? A. That seemed to have been the main thing, yes.

Q. Where and when was the last time that you called him long distance or short distance? A. I called him from Freeport, just before we left there.

Q. That is just before you sailed on the voyage that terminated here? A. That was just about six days ago.

Q. Six days ago. And when before that had you called him previously? A. Well, that was about two weeks before that.

Q. How often have you called his office since this collsion occurred, would you say? A. Four times—oh, you mean the whole time, since the collision occurred?

Q. Yes. Have you made it a practice to call him whenever you got into port? A. I thought you meant the last time that they got all my—I didn't think you meant from the time the collision occurred. I thought you meant the last procedure.

Q. I see. A. That has been about four times.

Q. I don't want to go into the perhaps many times you have called him, but have you made it a practice to call him every time that you got into port? A. Yes, so that he would know where I was and keep in contact so that, when the case came up, and this, that and the other, he would know where I was. That has been about the only conversations that have been held.

Q. So that about every time you got into port, you would call Mr. Schwartz at his expense and tell him where you were and what you were going to do, and is it fair to say that Mr. Schwartz has known at all times where you are or were? A. Yes.

Q. Have I ever called you since the collision or asked you to call me to tell me where you are or where you were traveling? A. No.

Deposition of James L. Smith—Cross

Q. There has been some statement in some pleadings in this case, Mr. Smith, that I have been concealing you. What do you have to say about that statement? A. Well, I didn't even know you were still living, as far as I am concerned. I haven't heard nothing from you.

Q. But you have heard from Mr. Schwartz. Have you ever heard from any other Government employees other than this Tiverton visit? Have you ever been interviewed by the F.B.I., perhaps? A. No.

Q. Has anyone ever telephoned your wife to find out where you were, that you know of? A. Yes. I haven't been home in so long that I just get a letter now and then, you see. Just like now, I didn't get my mail before I left the ship.

Q. Today, when we came ashore and we went up to the Coast Guard offices, you were interviewed by Mr. O'Connell here of Mr. Schwartz's office, were you not? A. Yes.

Q. Did he give you a letter addressed to you by Mr. Schwartz? A. Yes.

Q. Have you got that letter? A. Yes.

Q. Will you produce it, please? A. (Producing letter.)

Mr. Brush: I would like to offer that letter.

(Letter, dated August 25, 1955, Marvin Schwartz to James L. Smith, marked Smith Exhibit 1.)

Mr. Brush: Your witness.

Cross-examination by Mr. McGovern:

Q. Mr. Smith, when you reported to the Tanker Washington, were you assigned to a regular watch and did you stay in that watch? A. Yes.

Q. That was the second mate's watch? A. Yes.

Q. Riche? A. Riche.

Q. You had the same other members of the deck department in that watch, or did they change? A. This ordinary

seaman that was on watch there at the time of the collision, he came on board at Port Arthur.

Q. Upton? A. Yes. The other fellow that got off down there, I wouldn't hardly know him if I saw him, even though we stayed in the same room there for one trip down. But, this Upton is the one that go on at Port Arthur.

Q. How about Caldwell? Had he and you been on watch together? A. Yes. He was on there all the time. He was on there when I left.

Q. How did they divide up the watch? I noticed on your direct testimony that the quartermaster appeared to be doing most of the steering. A. That is right. He steered three and a half hours, you might say, and this AB, myself, only relieved him for a half hour. I was relieving him at the time.

Q. Did the quartermaster ever stand a lookout watch? A. No.

Q. The quartermaster on this ship worked for three and a half hours out of four hours as a helmsman? A. Yes, and the other period was a rest period.

Q. Is that true with respect to the ship that you are on now? A. No. No, the ship that I am on now don't carry a man that they call a quartermaster.

Q. In your experience in going to sea— A. They carry two AB's.

Q. Yes. In your experience in going to sea for all of your life—1933, wasn't it, when you first went on board ship? A. Yes.

Q. Have you run into any other companies where they have had this system where the quartermaster stood almost the entire watch at the wheel? A. To tell you the truth, I don't believe I ever was with any other company but that. There is companies, but I haven't been there.

Q. How about the mate? Where did he usually stand his watch? A. In the wheelhouse.

Q. You are on a T-2 tanker. Was the wheelhouse a standard T-2 tanker wheelhouse? A. Yes, that is right.

Q. You had wings in the bridge? A. Yes.

Q. You had portholes facing forward? A. Yes.

Q. Were they round portholes or square portholes? A. Round.

Q. Could they be dogged down with heavy glass? A. Yes.

Q. Were they dogged down with heavy glass on the night of the collision, if you remember? A. I don't know for sure.

Q. How about the wings of the bridge? A. The wings of the bridge was—there wasn't no cover over the top of the wings. It was wide open, plenty of visibility.

Q. You had a clear wing on the starboard side and a clear wing on the port side? A. That is right.

Q. Were there doors between the wings of the bridge and the wheelhouse proper? A. No, the only doors went right in the wheelhouse. I think what you mean is a blind there, probably, where you have got another door. No, that wasn't there. There was only just one door, that is, you went in and you were there.

Q. The whole thing was a big spreadout, then? A. Yes.

Q. If you went out on the wing of the bridge, you had visibility up and down and then a sweep around at that side, is that right? A. Yes, that is right.

Q. If you went out to the other wing of the bridge you had visibility up and down and a sweep around? A. That is right.

Q. Where was the gyrocompass with respect to the portholes in the forward part of the wheelhouse? A. Well, the gyrocompass is placed off to the left on most all these ships, and that one, too. That is the gyro repeater you are speaking of?

Q. That is right. The gyro repeater, the one you steer by. A. Yes.

Q. Was that masked so that you could just see the little top part of it? A. Yes.

Q. Would it make a ticking sound as you swung? A. Yes.

Q. Where was the wheel with respect to the gyro compass repeater? A. Well, the wheel is placed just about on the keel of the ship, right in the middle point of the ship.

Q. How far as the wheel from the gyrocompass repeater? A. Oh, two and a half feet. That is, the middle of the wheel.

Q. Where was the radarscope? A. Well, the radarscope, the radar machine, which is what you mean, was over to the left of the gyrocompass, right over next to the bulkhead on the ship.

Q. So that, when you stood at the wheel, you would look forward and out one of the portholes? A. Yes.

Q. But you couldn't see unrestricted? A. That is right.

Q. Could you see out the other porthole which was on your right side, as you stood at the wheel? A. The only one you could see out of was just a little aft of you. You could see out of that.

Q. How about the one on your left hand, could you see out of that, or was the gyro in the way? A. Oh, no. The gyro—you can see out of all three of them portholes. But, naturally, there is a partition in between which blocks off the sight.

Q. Could you see the gyroscope from where you were standing at the wheel? A. You mean the radarscope?

Q. The radarscope. I am sorry. A. Well, yes. But when you have got the helmsman's job, you can't very well plot anything on it. You can probably see an object on the radarscope, but that would be just about as far as it could go.

Q. You would have to leave the wheel and take a couple of steps to go over there to look at it? A. Yes, to see anything worth while.

Q. You wouldn't be allowed to leave the wheel? A. No. That wouldn't be in your line to leave the wheel at all like that.

Q. Were you allowed to smoke when you were in the wheelhouse? A. No.

Q. Were you allowed to smoke when you were out on lookout? A. No.

Q. Was the mate allowed to smoke in the wheelhouse? A. Well, yes, on most all ships. Yes, there wasn't no restriction there. I have seen cases where they didn't but, no, they could smoke.

Q. Was he smoking that night? A. I don't think so.

Q. Was Riche a heavy smoker? A. No.

Q. What part of the world did he come from? A. What part of the world?

Q. Yes. A. Well, he came from Louisiana, I think.

Q. Was he a Louisiana Frenchman? A. Yes.

Q. Was he a big man or a small man or medium? A. Pretty heavy man, yes.

Q. How tall? A. Oh, about five, ten.

Q. How about Upton. What kind of a man was Upton? A. Well, he was a little bigger than Riche. He was about six feet. I guess he weighed 200 pounds.

Q. You met him for the first time when he came aboard at Port Arthur? A. Yes.

Q. Where had he come from, if you know? A. Where had he come from when he was in Port Arthur?

Q. At Port Arthur, yes. A. I don't know.

Q. Do you know whether or not he had come from a Marine hospital? A. No, I don't.

Q. You left Port Arthur and went around the end of Florida, is that right? A. Yes.

Q. And came up the coast; but before you came up the coast, you put into Miami? A. Yes, that is right. I forgot about it, but we did. I will take your word for it, anyhow.

Q. Do you remember now? A. Oh, yes, sure—no, we didn't put in to Miami. I will take that back. We went into the Miami Seaway and the Coast Guard came out.

Q. And what did you put aboard the Coast Guard? A. We took a wiper off, a sick wiper, and the Coast Guard took him ashore at Miami.

Q. And you pulled out of Miami and came on up the coast, is that right? A. Yes.

Q. Were you far out from the coast at any time during this particular trip? A. Were we what?

Q. Far off. A. Well, you never see the coastline once you leave Jupiter there, the Florida Coast, you never see the coast any more, especially going north, until you get just about where you are going.

Q. After you left Jupiter on the course you were on, when would be the first time that you would expect to sight land? A. I imagine you would be just about up on the Delaware-Maryland shore. Well, you might see—well, Fenwick Island is the first thing you would see before you got there. I was just trying to think of another lightship you might pick up between Virginia and—

Q. Winter Quarter. A. Winter Quarter, yes. I have passed there so many times. I couldn't think of it right then. Winter Quarter, you might see that, too.

Q. Put yourself back in your mind to the night when you went on watch, and you went on lookout. Did you relieve a man named Brown, or was it a man named Owens? A. The one I relieved on the 8 to 12?

Q. Yes, the fellow from the previous watch. A. I don't know what his name was.

Q. You don't know what his name was? A. No.

Q. You weren't his roommate? A. No.

Q. What, if anything, did the lookout tell you when you relieved him as he turned over the watch to you? A. When I went up to relieve him at 12 o'clock?

Q. That is right. A. I don't remember now whether there was any—I don't think there was any—let's see. Yes, there was Navy ships out there at that time, too. Yes, there were ships out there at that time.

Q. This is customary in the Merchant Marine, is it not, for one lookout to tell the other lookout what ships are where? A. Oh, yes.

Q. As part of your regular duties? A. That is right.

Q. Where did you stand your watch with respect to the forecastle head? Was there a wind dodger up there? A. No, no dodger up there.

Q. You were out in the open, is that right? A. Right out in the open. You could see all around the horizon.

Q. What kind of visibility was there? Was it foggy? A. Good visibility.

Q. Did you see any lightships? A. No.

Q. Could you see the lights of any other vessels? A. At the time I was relieved, you mean?

Q. No, during the period that you were on lookout. A. Well, no. I think these Navy craft were about the only ones I saw.

Q. When did you see the Navy craft? A. Well, practically the whole watch they were up on the port and starboard, you know.

Q. How did you know or surmise that they were Navy craft? A. Well, they were in kind of a formation and I figured that the only thing they could be would be either Navy or fishermen, and the Navy ships are usually heavier. One of them had a red light, I believe, on the foremast.

Q. Was there any blinking back and forth? A. Yes, there was a little blinking, too. That was the biggest reason I figured they were Navy.

Q. You sailed during the war? A. Yes.

Q. Did you sail in convoy? A. Yes.

Q. You were accustomed to seeing ships in formation at night? A. Yes.

Q. When Upton relieved you, what, if anything, did you tell him with respect to the ships which you had seen? A. Well, I told him there were ships on the starboard and on the port and I said that I thought they were Navy ships.

Q. Did you tell him that you had reported them? A. Yes.

Q. Had you reported them? A. Yes.

Q. What system did you use? A. Used the bell system, one for starboard.

Q. Had you received a reply from the mate, a "Very Well" or "Well", indicating that he had heard your report? A. No. No, I couldn't hear that.

Q. On any steamship line on which you had been employed was there a custom of replying with their bell to a bell signal, by which I mean a lookout rings a bell and then the mate replies with a bell? A. No. That would be a good idea, but I never heard of it, never saw it done.

Q. After you were relieved by Upton you went back and had a cup of coffee, did you tell us? A. Oh, yes.

Q. And then you went up and relieved Caldwell? A. Yes, at 2 o'clock.

Q. When you were on the wheel at 2 o'clock, and I want to call your attention to the fact that the collision occurred about 15 minutes after 2, so I am trying my very best to get your recollection as it happened from 2 o'clock on, was there any report by the lookout of any vessel? A. Yes. Well, just before two, he rang one bell. That indicated a ship on the starboard side.

Q. Did the mate reply to this? A. Yes, he said, "Very well." Then, after 2 o'clock, there was another bell.

Q. How shortly after 2 o'clock? A. Oh, that was about five or six minutes after two, I guess.

Q. Was this a single bell, too? A. Yes.

Q. Did this indicate a ship on the starboard side? A. Yes.

Q. Did the mate reply to this? A. Yes.

Q. How much time do you estimate elapsed between the time that the mate said, "Very well" to this second report of a ship on the starboard side and the time that he told you that there were ships on the starboard side? A. Oh, that wasn't over three or four minutes either, I guess, that he mentioned about the ships being over on the starboard side.

Q. Did he say anything about which way they were coming? A. He said they were coming towards him, yes. Ships over on the starboard side—no, he said, "There are ships coming this way." Of course, he was on the starboard side. That was the side he was looking. Yes, they were coming towards us on the starboard side, which is a very bad indication because you don't like anything coming towards you on the starboard side, if you can help it. The port side is bad, too, but—(pausing).

Q. Since you hold the mate's license, you appreciated the importance of the starboard side, is that right? A. Yes.

Q. Did the mate make any effort to call the captain at this time? A. No.

Q. Did the mate make any effort to call the captain before the collision occurred? A. No.

Q. Where was the captain's quarters with relation to the bridge? A. It is right down on the next deck.

Q. Is there a speaking tube for communication? A. Yes.

Q. Do you know why the mate didn't call the captain? A. No.

Q. Have you thought about it before I asked you the question? A. Well, no. No, I didn't even think about it. The only thing I think—maybe he didn't think it was worth while until after the collision. It was too late then, just like anything else. He didn't have to call him after the collision because the whistles woke him up, see?

Q. About what time was it that you changed course from 009 on your gyro over to the right when you went, I think, to— A. 23.

Q. To 023, from 9 to 23? About what time was that with respect to 2 o'clock? A. That was right after I relieved the man on the wheel, right around 2 o'clock.

Q. Just about 2 o'clock? A. Yes.

Q. At that time did your ship blow any whistle signals? A. No.

Q. About what time was it that you changed course back from 023 back to your main course of 009? A. We were on that course, I think, about five or six minutes, you know, and then we went back.

Q. So it would be five or six minutes after two, is that right? A. Well, and then it takes a little while to get back on the course from that course.

Q. Now, when your vessel changed course back to your main course, did you blow a whistle? A. That is the first time anybody has asked me about that. I was surprised. No.

Q. You mean you were surprised that nobody asked you that question before? A. Yes, because it is not done anyhow most of the time on ships.

Q. You were surprised that the Coast Guard didn't ask you that, weren't you? A. Yes, sure. I was surprised the Coast Guard didn't ask me. It is not done, but that is the international rules of the road. Whenever you change your course, if it is to the right, you blow one whistle; to the left, two.

Q. At any time? A. At any time, yes.

Q. That is your understanding? A. Yes. Isn't that right?

(Discussion off the record.)

Q. Let's get back to your radarscope. Was anybody looking at the radarscope at any time from 2 o'clock on? A. No.

Q. Was the mate looking at the radarscope? A. No.

Q. Where was the mate? A. Looking out the porthole.

Q. Before you testified here today, did you look at your testimony before the Coast Guard? A. Yes.

Q. I call your attention there that you were asked this question, Question 122:

> "Was anyone operating the radar, I mean anyone giving it any attention, or was it running by itself?"

And your answer was:

> "Well, he was looking in it once in a while, I would say, but then the ships was in view. He was more or less concentrating his viewing of them rather than the radar."

Is that correct? A. Yes.

Q. Well now, you understand that to lawyers that may be inconsistent with the testimony you have just given. Do you want to explain the difference between the two of them? I am not trying to trap you. You see, you told the Coast Guard that he looked at the radar once in a while and you just said here that he didn't look at the radar and we just want to get— A. Well, if it is just that little much difference, he looked at it once in a while, then. We will have it that way.

Q. Well, we don't want to just have it. A. Well, like I say, he did. Of course, like I say, it has been almost three years ago and I can't remember just exactly what happened, see. He probably was looking at the radar once in a while, but he was concentrating more on the visibility of the ships.

Q. Did any vessel appear to signal to you before the collision? A. Yes, there was a vessel trying to signal. Whether it was to us or not, I don't know. I think the mate figured it was, maybe.

Q. When did this signal first come in? A. Well, that was a right good while before the collision.

Q. About 2 o'clock? A. It may have been a little after two, two or three minutes after two.

Q. *Not as much as five minutes after two?* A. *I don't* think so.

Q. From what side did this signal appear to come? A. It was on the starboard side.

Q. How did the signal come, by flashing? A. I couldn't see it. It was a series of A's, I figured, yes, to attract any ship in the vicinity. I have heard since that the light flashes are when you are on a speed run, or something. We figured—I did and he did, too—that they were trying to signal.

Q. How do you know he figured that they were trying to signal? A. Because he tried to make contact with them, see.

Q. Tell me about that. A. He used the blinking key for a while.

Q. Where was the blinking key? A. I believe he had a portable key there plugged in that he used.

Q. Where did the blinker come out? A. The blinker was on the yardarm.

Q. The yardarm? A. Large blinking lights. That is the one he was using.

Q. On a T-2 tanker, where is the yardarm with reference to the bridge? A. It was right over the top of the bridge.

Q. What were the lights which would have been blinking? A. What color were they? A. Oh, white.

Q. They were white? A. Yes.

Q. Do you know what he was trying to send back? A. No—yes. I think he was just sending them a dash, maybe, to try to get them to say something, whatever they wanted to say, and he finally gave it up. He figured they were trying to call us, so he gave a dash to show that he had seen them, you see; and then if they wanted to say anything they could. But, there wasn't nothing said, I don't think.

Q. Did this signalling keep up for some time? A. No, not long, a couple of minutes.

Q. How long would you say it was between the end of the signalling and the collision? A. How long between the end of the signalling and the collision?

Q. Yes. A. Well, I guess it was about ten minutes.

Q. As much as ten minutes? A. I think so, yes. It wasn't much after 2 o'clock before—I mean when he first started signalling with him, you know.

Q. You mentioned in your direct testimony about fishing boats. When did you first hear that anybody on your vessel thought these were fishing boats? A. Well, who said that anybody thought so?

Q. What? A. Who said that anybody thought so?

Q. In your direct testimony, you mentioned fishing boats. A. Well, the only one that thought so was myself, probably. I mean, nobody said anything about thinking they were fishing boats.

Q. Did you think they were fishing boats? A. I said I either thought they were fishing boats or Navy boats.

Q. You saw the blinker? A. Then, I thought they were Navy ships.

Q. I was wondering, because you wouldn't expect fishing boats to be blinking, would you? A. No.

Q. And fishing boats carry a different set of lights from Navy vessels, particularly if they have got their fish nets out? A. Oh, if they have got their fish nets out, they do. Yes, you can usually tell a Navy ship.

Mr. McGovern: Thank you.

Redirect examination by Mr. Brush:

Q. Mr. McGovern was saying that this blinker sort of indicated to you that they were Navy ships. What blinker are you talking about? A. Well, I mean the International Morse Code.

Q. I am not talking about that. You testified on cross-examination that there were two occasions when you saw blinkers; one was when you were relieved at lookout, is that right? A. Oh, yes.

Q. What color light was that blinking? A. That was white.

Q. Have you ever testified that that was red? A. No.

Q. You don't remember that? A. I never did.

Q. I am now talking about when you were relieved by Upton as lookout. As I understand it, you had concluded that different lights which you had seen at that time had come from Navy boats because you had seen some blinking, and that was around 1 o'clock or shortly before 1 o'clock? A. Yes.

Q. And then, later on, some ten minutes before the collision, you think there was some additional blinking off your starboard side, is that right? A. Yes.

Q. How did that blinking bear from the Washington? Was it ahead on the bow, or abeam, or abaft? A. Well, I couldn't see well enough. The only reason I know there was blinking going on was because the mate answered it.

Q. The mate came in and answered it? A. Yes.

Q. Did you hear him say anything? A. No, he didn't have anything to say.

Q. You assumed that, because he was blinking, someone was blinking to him? A. Yes, I assumed that. That is my opinion, you see.

Q. Did you ever see these lights, these blinking lights, at that time? A. No, I don't believe I ever saw the light

itself. I could see the loom of it, it seemed like, you know, but not the light itself.

Q. As far as you know, no reply ever came? A. No.

Q. To the Washington, at any rate? A. No.

Q. How far away was this signalling or blinking going on, do you judge, at 1 o'clock? Was it nearby? A. It must have been about two miles.

Q. Why do you say that? A. Well, I would say if it had been so far away—

Q. You wouldn't have seen it? A. No. Well, these shutter lights that they use you can see a good ways, but I don't think he would have been interested enough, if it had been too far away, you know. The mate would have figured it wasn't him, anyhow, but some other ship over there.

Q. This was 1 o'clock, and how did those lights bear from your Washington at that time? A. This time of the blinking, you mean?

Q. Yes. 1 o'clock we are talking about now. A. You are talking about when I was on lookout?

Q. Yes. A. I thought you was talking about when I was on the wheel and he was trying to answer them.

Q. Oh, no. You said you didn't see them at that time. You only saw the loom of the light or perhaps the reflection. A. Yes, that is the time I was on when he was trying to answer them, yes.

Q. I am talking about the blinking at 1 o'clock from which you concluded and commented to Upton that they probably would be Navy ships. Where were those lights with reference to the Washington? How did they bear? A. They were bearing about two points on each bow, the same ships that I was speaking about, you know, up on the bow, on both sides.

Q. Yes, that is what I thought. How far away were they? A. Well, they were about six or seven miles.

Q. And you think you could have seen the blinkers at that time at that distance? A. Well, I tell you. A shutter light you can see just about as far as anything, the regular high powered Navy which they use.

Q. Have you any idea in which direction those lights were traveling? A. They didn't blink very long, anyhow. We know—I was almost sure that they weren't blinking at the Washington. They were that far away, see. It was just a matter of flashing which you could see amongst the ships themselves.

Q. Have you ever received any money from Mr. Schwartz? A. No.

Q. None at all? A. No.

Q. Did you ever receive any money when you came to his office and talked to Mr. Sterling when you gave this statement? A. Well, they paid me for being ashore, yes, what time I was off—or tried to, but naturally, I was off longer than I got paid for.

Q. Do you recall now about how much that was? A. No, I don't remember how much it was.

Q. Have you received any money from either Mr. Schwartz or Mr. Sterling since then? A. No.

Q. I notice that you have a second mate's license but that you haven't sailed as second mate for some time. Can you tell us why? A. Well, jobs are so scarce that I just don't bother with it. On the President Lines' ship, I was third mate on that, to the Far East. But then shipping is slow and so I just don't bother with it.

Q. Since that time you have sailed as AB? A. Yes, except that trip I made to the Far East.

Q. We are going to ask you whether you waive signing this. You have the privilege of waiving the signing of this deposition, if you want. A. I will waive the signing of the deposition.

Certificate

Mr. Brush: That is all.

Mr. McGovern: Thank you, sir.

(Deposition closed.)

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK, } ss.:

I, PHILIP H. BUBE, a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify:

That James L. Smith, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal the day of September, 1955.

.....

Notary Public

Rual B. Caldwell, Coast Guard Testimony

A witness entered and was duly sworn.

By the Recorder:

1. Q. Give your name and address to the reporter? A. Rual B. Caldwell, Sourlake, Texas.

2. Q. What certificate do you hold issued by the Coast Guard? A. Able Seaman.

3. Q. May I see it? A. Yes. (Witness produced document.)

Recorder: "Z" No. 206558, endorsed for Able Seaman.

4. Q. What was your job on the Washington on the day of the collision? A. My job on the Washington was Quartermaster, helmsman.

5. Q. Were you on the bridge at the time of the collision? A. No, sir. I was not on the bridge.

6. Q. Where were you then? A. I was aft having coffee at the time. Excuse me. At the moment it happened I was on my way back to the room to get a pack of cigarettes when I heard the whistles blowing.

7. Q. What time did you leave the bridge? A. At approximately 2 a. m.

8. Q. What time were you due back? A. At 2:30.

9. Q. What knowledge do you have of the happenings at the time of the collision? A. At the time of the collision I have knowledge, sir, of the happenings of the collision.

10. Q. Did you hear any whistles blown? A. Yes, sir. I heard whistles. Rapid blasts on the ships whistle.

11. Q. How many? A. Well, more than a half dozen.

12. Q. Where were you when you heard it? A. I was in the starboard passageway adjacent to the crew's quarters

of the deck department and I had gone down there for the purpose of the cigarettes in my room.

13. Q. Did you go to the bridge? A. No, sir. I didn't immediately go to the bridge.

14. Q. When did you go? A. Well, it must have been about 5 minutes maybe it might have been 10. I didn't immediately go to the Bridge.

15. Q. What would that make it on the clock? A. Well, it might have been about 2:25.

16. Q. Had you been out on deck before the collision? A. No, sir.

By the Board:

17. Q. What work did you perform commencing at the time you went on watch at mid-night? A. I was on wheel watch at mid-night until 2 a. m.

18. Q. Were you on continuously until 2 a. m.? A. Yes.

19. Q. How did you go aft from the wheel house? A. By the catwalk.

20. Q. How did you get on the catwalk? A. Out on either wing. I came out the port wing I believe and down that way.

21. Q. From a position at the wheel could you see out ahead? A. Directly ahead I could have, yes, sir.

22. Q. Did you see any vessels in sight at around just before 2 o'clock? A. No, sir, not from the position at the wheel.

23. Q. Did you see any lights of vessels when you went out on the wing to go aft? A. I never observed any, no, sir.

24. Q. Did you particularly look for any? A. No, sir, I didn't.

25. Q. What did these whistle signals mean to you, the series of whistle blasts? A. Well, to me it meant that it was a danger signal and I immediately turned around

as I said, I was in the starboard passageway and the best I remember, I started back up to the companionway which leads out to the mess hall and to the poop deck and I didn't get to the poop deck until someone, I don't recall right at this moment, came down the companionway ladder and told me we hit somebody or somebody hit us and I immediately returned to my room to get my life jacket and then I went back up on deck.

26. Q. You went back up on the bridge? A. No, sir.

27. Q. Up on the Poop deck? A. Yes, sir.

28. Q. Did you see anything up ahead from that position when you were on the Poop deck? A. No, sir, I didn't; not immediately.

29. Q. Who relieved you of the wheel at 2 o'clock? A. The Able Seaman on watch by the name of Smith, I believe.

30. Q. Did you go back to the wheel house shortly after the collision? A. Shortly, yes, sir.

31. Q. What did you observe up there? A. At the time I got back I observed the Navy vessel that is involved off to the port hand and evidently we had backed away at that time. The deck lights were on at that time, you know the flood lights and you got a pretty good impression.

32. Q. Where are these flood lights? A. They were on the wings of the poop deck.

33. Q. On your ship? A. Yes, sir.

34. Q. Were there any lights visible on the Navy ship? A. Yes, sir. There were.

35. Q. What lights did you observe? A. The lights that I distinctly observed were the normal running lights which in this case was a red light, port light of the Navy vessel and mast light. I assume of course there was other lights that I don't know the significance of.

36. Q. Did you go directly into the wheel house when you went back to the bridge? A. I went directly into the wheel house.

37. Q. Whom did you see in there when you arrived? A. The A.B. on the wheel and I don't remember definitely who else was on the bridge at that time. Inside the wheel house however; the Captain was on the wing of the bridge, the port wing at that time. I do remember him because he was using a megaphone and said something.

38. Q. Did you receive any orders from anyone in the wheel house? A. At that time I didn't, no, sir.

39. Q. Did you at any time? A. Immediately, no, sir. There was quite some time before the orders were given to the wheel.

40. Q. Did you see or hear the Second Mate up there? A. Yes, sir, I must have. At that moment and what position I don't remember.

41. Q. Did you hear anything he might have said to the Captain? A. No, sir. I didn't hear anything.

42. Q. Did you hear what the Captain said through the megaphone? A. No, sir. I didn't get that.

43. Q. Do you know to whom he was speaking to through the megaphone? A. Directly to the Naval vessel I believe.

44. Q. What wing was he standing on at the time he was speaking? A. On the port wing.

45. Q. Did you hear any response from the Naval ship? A. No, sir. I did not.

46. Q. Were you injured as a result of the collision? A. No, sir, I wasn't.

47. Q. Did you experience any difficulty with the steering mechanism during your two hour watch? A. No, sir. Nothing at all.

48. Q. How did she steer? A. She responded normally.

49. Q. What is normal for the Washington? A. Well, the wheel is a slightly stiff, but it's a T-2 tanker. I think I observed the same stiffness in most of them.

50. Q. Nothing out of the ordinary? A. Nothing out of the ordinary.

51. Q. Were you present in the wheel house at the time the bell was struck about 2 o'clock? A. No, sir. I had departed the wheel house before the bells were struck. That is more or less normal procedure in leaving a little early.

52. Q. You left by the clock then? A. No, sir. Well, normal procedure is the relief at the wheel comes up a few minutes before the designated time.

53. Q. Who was the lookout when you went on watch at mid-night? A. I believe when I went on watch I think that would be the guy coming off the 8 to 12.

54. Q. Went on with you? A. That was the Able Seaman Smith. He went on the lookout at 12 midnight.

55. Q. What other members of the crew was on watch with you? A. At that time I think there was a fellow by the name of Upton, which was an Ordinary Seaman and he was on standby aft.

56. Q. Where was Smith standing his watch? A. On the forecastle head.

57. Q. Do you recall any reports being received by the bridge from the lookout to the effect that the running lights were burning brightly or satisfactorily? A. Well, I didn't hear anything to that effect but I know that, well I don't know whether. No, I didn't hear anything.

58. Q. Did you hear anything to the effect that they were not burning brightly? A. No, sir.

59. Q. How is that usually transmitted from the lookout to the bridge by voice? A. Yes, sir.

60. Q. He sings out? A. Yes, sir.

61. Q. You didn't hear him sing out? A. No, sir. It would be kind of hard.

62. Q. Did you relieve the wheel at any time between 2:15 and 4 o'clock? A. Yes, sir.

63. Q. At what time? A. Approximately 2:15 I believe. To the best I remember I remained there until 4 a. m.

64. Q. During that time did you hear anyone have conversation with people who were not of the ship's company of the Washington? A. No, sir. Excuse me. Yes, sir. There was. Of course I didn't hear the conversation, no, sir, but there were people aboard from the Navy vessel.

65. Q. There were people aboard from the Naval vessel? A. Yes, sir.

66. Q. At what time did they come aboard? A. Maybe it was around 3. To the best of my knowledge, 3 a. m.

67. Q. Did those people come to the bridge? A. Yes, sir.

68. Q. Did you hear any of their conversation at all? A. No, sir.

69. Q. How many were there in the party? A. Three, that is all.

70. Q. Did you see the lights of any vessel between midnight and 2 o'clock? A. At a distance I saw what I assumed to be vessels. Just from glancing up from the compass but they was a long ways off.

71. Q. At about what time was that? A. That must have been 1 o'clock.

72. Q. What was your course at that time? A. 009°.

73. Q. Were you steady on your course? A. Yes, sir.

74. Q. In what relative bearing to the ship did you see those things that you thought were lights or vessels? A. Well, the ones I remember seeing at that time; approximately that time was oh, maybe 3 points on the port bow.

75. Q. Could you distinguish them as the running lights of vessels? A. No, sir, not the type of vessel I couldn't.

76. Q. Could you tell in which general direction they were proceeding? A. No, sir. Merely the white lights and I didn't or even thought about it. I don't think I could have if I wanted to at that time.

77. Q. Did they look close aboard or far away? A. Far away, sir.

78. Q. Did the lookout report the lights at all? A. Yes, sir. Evidently should.

79. Q. Did I understand you to say that the lookout did report the lights? A. Yes, sir.

80. Q. Approximately how many lights do you recall that you saw? A. Well, it might have been 3, it might have been 2, I don't remember.

81. Q. And you previously stated that the color was white? A. Yes, sir.

82. Q. All of them were white lights? A. Yes, sir.

83. Q. Were they clearly the lights of vessels rather than the lights of an aid to navigation? A. I believe so, they were steady lights.

84. Q. Would they be apt to be reflections from the lights of the bridge, the wheel house? A. No, sir.

85. Q. At any time during that 2 hours did the Officer in charge of the watch comment upon the lights? A. Well, I believe he might have but I don't remember what he had to say.

86. Q. Did he give any indication to you that he had seen the lights? A. I can't answer that directly because I don't remember.

87. Q. Did he give you any change in course? A. At one time he did.

88. Q. And what course change was that? A. To the port at that time.

89. Q. At about what time was that change in course? A. Around, well, that is when I must have seen the vessels. At that time it must have been around 1 o'clock or approximately. I don't remember that clearly.

90. Q. Was this change in course a temporary change from which you immediately or very shortly returned back to your basic course of 9° or was it a change that was retained for the remainder of the watch until 2 o'clock. A. It was a temporary change.

91. Q. Did the officer in charge of the watch indicate why he made the temporary change in course? A. I don't

remember sir. He might have and he might not have. I don't know if he did.

92. Q. Do you know if anyone was injured in the casualty, in the accident? A. The ordinary seaman evidently was injured leaving the forecastle head at whatever time he left the forecastle head. I assumed that was due to the accident.

93. Q. What was the course which the quartermaster was supposed to be steering when you left, when you were relieved? A. When I was relieved the course was 9.

94. Q. 9? A. Yes. 009°.

95. Q. By Gyro? A. By Gyro, yes.

96. Q. And did the man who relieved you repeat that course back to you to make sure that he had it? A. Yes, sir, he did.

97. Q. And who relieved you of the watch? A. A fellow by the name of Smith, Able Seaman.

98. Q. Was this the man who was on the lookout? A. Yes, sir, between 12 and 1, the same man.

99. Q. Who relieved Smith from the lookout? A. Ordinary Seaman, Upton.

100. Q. You were in a position to know all these things now from first hand knowledge, is that correct? A. I am only in a position to know that that is the way it should have been done, ordinary practice. As far as having seen the man relieve the man I don't know.

101. Q. Do you know where Upton was standing his lookout watch? A. The forecastle head.

102. Q. Was that on instructions from the officer in charge of the watch or just on the normal procedure of standing a watch? A. Normal procedure.

103. Q. What was the weather conditions at the time around, say 1 o'clock? A. At 1 o'clock the weather was clear.

104. Q. What was the condition when you left the bridge at 2 o'clock? A. The weather was clear.

105. Q. Were there any changes in speed of the vessel during that period of time? A. Between 12 and 2 there was no changes in speed.

106. Q. Was the officer of the watch on the bridge all the time you were on watch? A. Yes, sir.

107. Q. Was he alert, moving around? A. Yes, sir.

108. Q. Was the master on the bridge at any time during the two hours you were on watch? A. During the period of 12 to 2 he was not on the bridge.

109. Q. As the quartermaster, what were your duties on the bridge? A. To steer the vessel.

110. Q. And nothing more? A. Nothing more.

111. Q. When that change of course to port was ordered, how much of a change in course was made? A. Well, honestly I can't answer that definitely, but I don't believe it was much over 20 degrees approximately. I'd say approximately 20 degrees change; maybe not that much.

112. Q. What was the order which you received from the officer of the watch which caused you to change the course to the left? A. He told me to come left, give a left wheel, which normally to me would be a very small amount of rudder and then after the ship got into position that he wished it, he told me to steady it and whatever the course was so I repeated it after I got the ship steady. I told him whatever she was heading. I don't remember what it was.

113. Q. After this change in course what was the position of those lights that you saw? A. They were then past the bow over on the starboard hand.

114. Q. And the course was sufficient to bring the lights from about 3 points on the port bow over to your starboard bow, is that correct? A. Yes, sir. It was evidently more than a 20 degree change.

115. Q. And how long after that 20 degree change of course to the left was it before you returned back to your course of 9°? A. After the change to the left I believe it

must have been well maybe 10 minutes but, not, I don't remember whether it was 20 degrees or what it was. I mean I don't mean to imply that was 20 degrees definitely. I don't remember.

116. Q. Were you able to see these lights after you had returned to your basic course of 9? A. No, sir. I don't remember seeing those lights.

117. Q. How long had you been signed on this vessel, the Washington? A. I signed on September the 4th, this year.

118. Q. When did you become aware of the identity, of the positive identity of the other vessel in the collision? A. The positive identity of the other vessel, when I went back to the bridge sir.

119. Q. And about what time was it that you returned to the bridge? A. Shortly before 2:30. Approximately 2:25.

120. Q. You previously testified that when you heard someone say that there had been a collision that you went back to your stateroom and got your life jacket? A. Yes, sir.

121. Q. How long did it take you to do that? A. It must not have taken me over two minutes if it took me that long.

122. Q. Then you proceeded directly to the bridge? A. No, sir.

123. Q. Why not? A. I don't know exactly why not. I went on the poop deck. I don't remember exactly why I didn't proceed directly to the bridge.

124. Q. What is your normal station in the event of a collision? A. In the event of collision I have No. 2 fire station forward on the foredeck. That is the general alarm I assume.

125. Q. Was the general alarm sounded? A. I don't remember it being sir.

126. Q. When you got to the bridge after equipping yourself with your life jacket did you see any vessels other than the Washington? A. I saw the Naval vessel, sir.

127. Q. How many? A. The one that was involved in the collision at the time that I got to the bridge.

128. Q. Where was it with relation to the Washington when you saw it? A. On the port bow in relation to the Washington.

129. Q. Was it close aboard or far removed? A. Fairly close.

130. Q. Could you hear any voices on the damaged Naval vessel? A. No, sir.

131. Q. How do you know it was the damaged Navy vessel that you were looking at? A. I didn't know it was the damaged Naval vessel, I assumed that.

132. Q. After you returned to the bridge with your life jacket what did you do? A. Relieved the man at the wheel, took that station.

133. Q. And the man at the wheel was? A. Smith.

134. Q. Smith? A. Yes, sir.

135. Q. Do you know what Smith did? A. No, sir. He left the wheel house.

136. Q. Was the master in the wheel house when you returned to the bridge? A. No, sir. He was on the port wing.

137. Q. He was on the port wing of the bridge? A. Yes, sir.

138. Q. Could you hear him talking with anyone? A. I heard him speak over the megaphone. What he said I don't know.

139. Q. Did you hear anyone talking towards the Washington from the Naval vessel? A. No, sir.

140. Q. Where was the Second Mate standing his watch during the time you were on the bridge, that is, relatively? A. Relatively he was standing near the port hole in the wheel house most of the time and if he was ever from there he went out on the wing.

Examination of Rual B. Caldwell

141. Q. Was it apparent to you that he was not keeping a sharp lookout? A. I believe, I would say he was keeping a sharp lookout.

142. Q. Do you know whether or not he saw the lights that you saw? A. No, sir, I can't say that I know what he saw. I assumed he did.

143. Q. How much time was the interval between the time you saw these lights around 1 o'clock and until the course was changed to the left? A. A very short period of time, perhaps 5 minutes, that is when I saw them.

144. Q. Did you report the lights to the officer in charge of the watch? A. No, sir.

145. Q. Do you know whether or not the lookout reported them to the officer in charge of the watch? A. I heard two bells, that is the system that we use. I assumed he heard them; I heard them.

The Board: Any questions Mr. Brush?
Mr. Brush: No, thank you.
The Board: Cdr. Schlegel?

By Cdr. Schlegel:

146. Q. You said that you heard the two bells from up forward which you assumed to be your lookout giving a report of the ships ahead. Exactly what did those two bells indicate to you? A. That there was an object sighted on the port hand somewhere.

147. Q. Did the mate on watch give any indication of having heard these two bells? A. Yes, he picked up his glasses and looked to the port.

148. Q. Will you describe your visibility as you stand at the helm? A. As I stand at the helm I can see directly ahead best first of all and approximately 2 to 3 points; maybe I can't. I think maybe I can on the port and starboard hand but that is limited visibility because of the

ports. There are three ports. One in the center and one on each hand.

149. Q. And you looked through the forward port or is it looking through all three of these ports that gives you the full forward visibility of 2½ either side? A. All three of the ports to give the visibility.

150. Q. Were these ports open or closed on the evening when you went off watch at 2 a. m.? A. The glass ports to the best of my knowledge were closed.

151. Q. Were all the openings in the wheel house closed when you went off watch at 2 a. m.? A. No, sir.

152. Q. What was open? A. The two doors were open and maybe the port that is on the port side of the wheel house might have been open. I don't remember.

153. Q. Can you say of your own knowledge what arc of visibility the mate on watch had from the station where you said he was standing his watch for the most part? A. From my own knowledge I can't give—tell you exactly.

154. Q. Just approximately, as best you can? A. Well, I would say that he at least had—with the port being closed the couldn't have had 180° visibility. I'd say 95° on each side.

155. Q. 95° on either side of zero? A. Yes.

156. Q. Did he change from that position very frequently during the time up until 2 a. m.; from mid-night until 2? A. I don't remember whether it was frequently but I know he did walk back and forth and several times he went out on the wing of the bridge, but I don't know how many times.

157. Q. Do you know whether or not any messages were received aboard the Washington to stand clear of these vessels which were the white lights that you saw up ahead? A. No, sir. I have no knowledge of any messages being received.

158. Q. Now, I want to make doubly sure, was the lookout who reported the lights the same Smith who was

the helmsman at the time of the collision so far as you know? A. I wouldn't know that because I believe that was around 1 o'clock and they change up there sir approximately 1 o'clock.

159. Q. On the lookout? A. Yes, sir. They change lookouts, so I wouldn't know.

160. Q. But Smith, whom you presumed to be up there; I think you indicated earlier that Smith was the one who should have been on lookout during that interval, didn't you? A. Well, what I meant to indicate was that he went up on there at 12 o'clock. Now, when the man left I don't know, but I assumed he left at 1 o'clock.

161. Q. And the man who was up there at 12 o'clock was the same Smith who had the wheel, to whom you relinquished the wheel at 2 a. m.? A. Yes, sir, that is correct.

162. Q. And had Smith been relieved of lookout at 1 o'clock or there abouts, do you know whom his relief would have been? A. That would have been Upton.

163. Q. At the time you turned the wheel over to Smith at 2 a. m., what instructions did you give him if any? A. I gave him the normal instructions; to steer the course 9° which was the course—the ship's course at that time and he repeated the course. When I knew he understood then I gave him the wheel.

164. Q. When after you relinquished the wheel at 2 a. m. or thereabouts, were you conscious of your engines being placed in reverse, if you ever were? A. Well, I can't give a definite answer, but approximately maybe 15 minutes maybe 20 minutes, I left the wheel.

165. Q. And was this before or after the collision impact? A. Well, I never really ever felt the collision impact. The only change that I had of unusual feeling of the ship was when she went astern. I assume she might have been going astern.

166. Q. Can you tell me how long either before or after you heard the first blast of this series of whistles it was that you became conscious that the engines were in reverse? A. Immediately after. The only thing I can say I was conscious anyway.

167. Q. How many times approximately had you stood watch with the mate who was on watch at the time of the collision? A. I have been on that watch since September 4 and I couldn't estimate approximately.

168. Q. It's been several times though? A. Yes, sir, it has.

169. Q. After you had made this temporary change of approximately 20 degrees to port and had held it for approximately 10 minutes, when you came back to the course, did you come back rapidly or did you ease back to your original course? A. We eased back, sir.

170. Q. Approximately how long do you estimate it was from the time that you received the order to come back to your original course until you were in fact on that original course? A. Well, maybe it was two minutes but it was real easing back on the course and it wasn't rapid.

Cdr. Schlegel: That is all sir.

The Board: Does anyone else have any questions for the witness.

By the Board:

171. Q. Was the master notified of this temporary change in course? A. To my knowledge he wasn't notified.

172. Q. He was not notified? A. No.

173. Q. Was there any lights in the wheel house? A. No, sir, there wasn't.

174. Q. It was in total darkness? A. Yes, sir. Except for the little light on the compass for steering purposes.

Examination of Rual B. Caldwell

The Board: Any further questions for the witness?

Mr. Brush: No.

Cdr. Schlegel: No.

175. Q. You are at liberty to state anything which you think should be a matter for the record in this board which has not already been brought out by the questioning? A. Well, I don't believe I have anything further sir that would help out because I didn't see nothing. Everything—whatever I saw, if I saw anything was after it happened and it—

176. Q. You have nothing further to contribute to this hearing? A. No, sir.

(Neither side, the parties in interest or the Board desired to further examine the witness.)

(The witness was duly warned, dismissed and he withdrew.)

* * *

(The Board adjourned at 1645 hours, 17 November, 1952 to reconvene at 1000 hours, 18 November, 1952.)

James Arnold Upton, Coast Guard Testimony

A witness entered and was duly sworn.

By the Recorder:

1. Q. Give your name and address to the reporter. A. My name is James Arnold Upton; rating on ship, Ordinary Seaman, S.S. Washington.

2. Q. What is your address? A. 319 Columbia Avenue, San Francisco, California.

3. Q. What certificates do you hold from the Coast Guard? A. Sir?

4. Q. What certificates of Service do you hold of the Coast Guard? A. Ordinary and Wiper's.

5. Do you have your papers with you? A. Yes, sir. (Produces papers.)

Recorder: Z-678534, Wiper, Ordinary Seaman.

6. Q. What was your job on the Washington at the time of the collision with the Navy transport Ruchamkin? A. I relieved the lookout at 0100, and the able bodied seaman had reported all lights when I relieved the lookout.

7. Q. At 1 o'clock? A. 0100. And at some time, I can't say exactly, because I didn't have a watch, maybe something before 2:00 I reported a light off the starboard bow around three points; and when 2 o'clock came I rung the ship bell. I rung four bells for 2 o'clock, and about two minutes later I reported the same light again, because the ship was approaching us very fast. And later, I'd say 10 minutes, I rung a bell. That is when the ship came into collision. From there I don't know what happened.

8. Q. You first saw the light shortly before 2 o'clock? A. Yes, sir.

9. Q. You reported the light to the bridge? A. I did. I rung one bell.

Examination of James Arnold Upton

10. Q. Did you get any answer from the 2nd Mate? A. That, I don't know. I didn't hear.

11. Q. Did you ring the bell loud enough to hear? A. Yes, sir.

12. Q. Could you speak a little louder please so that everybody can hear? A. I rung the bell very loud. And if he repeated it I didn't hear him.

13. Q. That was before 2 o'clock? A. Yes, sir.

14. Q. Then when was the next signal that you gave to the bridge? A. Well, after 2 o'clock—something after 2:00. I don't know, I didn't have a watch. I rung the same light another bell, and the light was approaching us very fast; and the third time I rung all the bells. I don't know exactly what did happen there, I was out. When I come to my senses I was laying on the well deck.

15. Q. What kind of lights were these that you saw on the starboard bow, Mr. Upton? A. Starboard bow—if they had any running lights I did not see them—I saw only the mast lights.

16. Q. No colored lights? A. Yes, if they was on I never saw them.

17. Q. This was the first sighted lights before 2 o'clock? A. Yes, sir.

18. Q. Did you see the colored lights at all before you landed on the well deck? A. No, sir.

19. Q. Were there two white lights or were there more? A. Only one white mast light.

20. Q. One mast light? A. Yes, sir.

21. Q. Where were you from 12 to 1? A. I was on standby in the messhall where I could hear the phone ringing. If the phone rung I would report to the bridge immediately.

22. Q. Who was on lookout from 12 to 1? A. Able Bodied Seaman.

23. Q. What was his name? A. Smith.

24. Q. Did you report your own lights at 1:30? A. Yes, sir.

25. Q. Were they burning bright? A. Yes, sir.

26. Q. What lights were on? A. The port light, the starboard light and the mast light.

27. Q. Did you have a range light—after light? A. On the bow?

28. Q. No, on the after mast? A. Yes, sir. Well, the mast forward, it was burning.

29. Q. Were you carrying a range light, a white light aft on the after mast? A. Yes, we was carrying one, yes, sir.

30. Q. Was it lit at 1:30? A. I was on the bow, you can't see from the bow up through the midship aft.

31. Q. You can't see the range light from where you are at on the forecastle head? A. I don't know about that sir, but I do know the forward mast light, the starboard and port was all burning.

32. Q. And they were burning at 2 o'clock also? A. Yes, sir.

33. Q. You reported that to the bridge after you struck the four bells? A. No, sir, I checked when I first went on lookout.

34. Q. Didn't you report them thereafter? A. I have been, but that time I didn't. If they hadn't been burning I would have hollered to the bridge.

35. Q. I see. But you rang four bells for 2 o'clock? A. Yes, sir.

36. Q. But you don't make it a practice of reporting the lights unless there is something wrong with them? A. Yes, sir.

By the Board:

37. Q. Why did you ring four bells at 2 o'clock? A. Well, they ring the ship's clock bell in the wheelhouse. I repeat them.

38. Q. You heard the bell from the wheelhouse and you answered it with four? A. Yes, sir.

39. Q. That was how you knew it was 2 o'clock? A. Yes, sir.

40. Q. Did you hear any bells at 1:30? A. Yes, sir.

41. Q. Were any bells struck at 1:00 o'clock? A. Yes, two bells.

42. Q. Who struck them on the forecastle head? A. I just had relieved the lookout. I struck them myself.

By the Recorder:

43. Q. Did you leave the forecastle head at all between 1 and 2 o'clock? A. No, sir.

By the Board:

44. Q. Was this light that you saw on the starboard, was that the only light you saw between 1 and 2 o'clock? A. No, sir, there was several other lights. There was a light on the port side I reported that, and I reported the one on the starboard.

45. Q. The one on the port that you reported, have you any recollection of the time approximately as to when that was? A. It was something around between 1 and 1:30.

46. Q. You saw no lights from 1 to 2? A. The lights was there had already been reported to the bridge by bells.

47. Q. I don't understand—I mean between 1 and 2 did you see any other light other than the two that you have spoken of, the one to port and the one to starboard? A. Yes, there was a few lights, but they was away off distant.

48. Q. When you relieved Smith at 1 o'clock, did he point out any lights to you? A. Yes, sir, he reported one

on the port bow—off the port bow had been reported and some on the starboard had been reported.

49. Q. Could you see those on the starboard at 1 o'clock? A. Yes, sir.

50. Q. What happened to the light that was on the port bow at 1 o'clock? A. At 1 o'clock it crossed our bow around about 1:15.

51. Q. Do you know, if after seeing that light on the port bow, your ship changed course or not? A. Yes, sir, it did change course.

52. Q. Where did it leave that light that was on the port bow after a change of course was made? A. Yes, sir, it did change course.

53. Q. Did it put it on the starboard side? A. Yes, sir.

54. Q. Then what happened to it? A. Then when this ship on the starboard was coming—

55. Q. Wait a minute, this is—about what time did this happen, this change of course; you came on at 1 o'clock and Smith said there is a light off on the port bow, is that right? A. Yes, sir.

56. Q. Then later on the ship changed course and put it on the starboard—how soon after 1 o'clock was that change of course made? A. I don't know exactly, I couldn't say what time.

57. Q. Was it before you struck three bells at 1:30? A. Yes, sir.

58. Q. And that change of course put the light that was on the port bow on your starboard bow? A. Yes, sir.

59. Q. And then, in addition there were other lights on the starboard bow, is that correct, at 1 o'clock? A. Yes, sir, at 1, just when I relieved.

60. Q. And shortly after 1 o'clock after the change was made? A. Yes, they—I said they had already been reported.

Examination of James Arnold Upton

61. Q. What happened to those lights that were on your starboard bow after the change of course was made? A. They were still on the starboard bow far off distant.

62. Q. Did they eventually pass astern of you or did they remain on your starboard? A. They remained off the starboard off to a distance.

63. Q. Could you see any side lights on those lights off to starboard? A. What do you mean, sir?

64. Q. Any red or green light? A. No, sir, I didn't see any.

65. Q. Shortly before 2 o'clock you reported a light three points on the starboard bow? A. Yes, sir.

66. Q. Now, between that first report you made and the next report you made at about 2 o'clock did the bearing of that light change? A. No, sir.

67. Q. It stayed steady at three points? A. No, sir, it didn't stay steady.

68. Q. Well then it did change? A. Yes, sir, it must have.

69. Q. Which way did it change? A. It looked like it was coming around toward us.

70. Q. Could you illustrate for us? (Witness handed sketching paper.) A. It came in this direction, and after I rung all the bells—four or five bells it finally changed like this. (Sketches position of vessels.)

71. Q. And all you could see at the time was the light? A. Yes, sir.

72. Q. You could not see the shape of the vessel, could you? A. Not until I was right up on it.

73. Q. I know, but at the time you first reported that light, was the light all you could see? A. That is all I could see, the light.

74. Q. What gave you the impression that it was moving fast? A. Well it wasn't very long from the time I reported the first time till I reported the same light the second time.

Q. And between that time where had the light moved, if it had moved. I mean, when you first saw it it was three points—which way did it move? A. It came about three points and a quarter more; probably if it hit us it would hit us right around midships.

75. Q. But the light when you first saw it was three points on the starboard bow? A. Yes, sir.

76. Q. Now, where was it when you next reported it? A. Just a little distance, about three-quarters—3¼ points.

77. Q. You mean it was more to the right or more to the left? A. Well, it was more to the right.

78. Q. So the light remained about on the same bearing? A. I wouldn't say that no, not on the same bearing, no, sir.

79. Q. Well, between the time that you first reported the light and the time you made the next report, do you know if your ship changed course or not? A. Yes it did change.

80. Q. This is the light on the starboard we have reference to? A. Yes, sir.

81. Q. Did the change of course as made by the Washington make any change in the bearing of that light? A. The first time it changed it changed I'd say about 10 degrees to the right, and then later it came back on the course.

82. Q. When did you first make out the loom of the vessel? A. The loom was right at the last when I rung all the bells. It approached so fast all I could think of was ringing the bells—four or five bells.

83. Q. Did you hear any whistle signals from either vessel? A. I heard whistles from our vessel.

84. Q. What whistles did you hear? A. I think it was a short whistle and a long whistle.

85. Q. How many shorts? A. That, I don't recall.

86. Q. Well, was it one short or a number of shorts together? A. I think it was two shorts and I don't know how many long ones there was; I was excited.

87. Q. Where were you standing at the time you first saw this—reported this light to starboard? A. Right on the bow.

88. Q. Forward of the windlass? A. Yes, sir.

89. Q. Where were you standing when the ship hit? A. I was at the bell.

90. Q. And where is the bell located? A. Back—

91. Q. With respect to the windlass? A. Back of the windlass.

92. Q. What happened to you when the ships collided? A. From there when I come to my senses I was on the well deck.

93. Q. Did you see the ships hit? A. No, I was all excited; if it hit I didn't know anything about it, I was out.

94. Q. Were you on the forecastle head when the ships hit? A. I was at the ship's bell on the forecastle head.

95. Q. And which way were you looking? A. I was ringing the bells and trying to look forward. I was all excited.

96. Q. Did you see any lights on the other ship? A. Just the mast light.

97. Q. Did you hear any whistles sounded from the other ship? A. No, sir.

98. Q. When the ships hit did you see anything? A. I didn't, no.

99. Q. Do you recall hearing how the crash sounded? A. I don't know anything about that, I was laying on the well deck when I come to my senses.

100. Q. Did you pick yourself up? A. I was just in a dream wandering around there; I don't know what I was doing.

101. Q. How long have you been going to sea in the Merchant Service? A. I have been going to sea since 1936 sir.

102. Q. Offshore ships? A. Offshore.

103. Q. Have you been going to sea in American ships all that time? A. All the time in American ships.

104. Q. American ships? A. Yes, sir.

105. Q. Ships on which Articles are signed? A. Yes, sir, coastwise, inter-coastal, foreign articles.

106. Q. Now, at 0100 when you relieved Smith, how many different lights did he point out to you? A. There was three or four on the port—quite a lot of them on the starboard.

107. Q. Quite a lot of them on the starboard? A. Yes, sir.

108. Q. Since going to sea since 1936, how many of those years have you sailed in the deck department? A. Well, I'd say since the war in the deck department—sailed since the war in the deck department.

109. Q. And have you served as lookout on each of your voyages? A. Yes, sir.

110. Q. How many vessels would you estimate were represented by these lights that Smith pointed out to you? A. That, I couldn't tell sir.

111. Q. Well, you say you saw a number of lights on the port bow—do you think that was one vessel, two vessels, how many? A. I would say maybe three vessels there.

112. Q. You think that as a result of the lights that were pointed out by Smith there were three vessels on the port bow? A. Yes, sir.

113. Q. As a result of the lights that he pointed out to you on the starboard bow how many vessels do you think there were out there? A. Off distance I couldn't tell, it seemed to me they were lined up like fishing boats.

114. Q. Have you ever served in the Navy? A. Yes, sir.

115. Q. When was that, before '36? A. No, after—during the war.

116. Q. What types of ships did you sail in in the Navy? A. Destroyers.

117. Q. In the deck department? A. No, sir, below.

118. Q. Engine room? A. Yes, sir.

119. Q. How many years were you in the Navy? A. 1940 to 1946.

120. Q. About how far—these lights you saw to starboard that Smith pointed out to you, were all white lights? A. White lights, yes sir.

121. Q. How far off would you guess they were? A. That, I couldn't say sir—quite a distance.

122. Q. Is there a phone system between the lookout station on the forecastle head and the wheelhouse? A. Yes, they got one down below under in the forecastle head.

123. Q. It's not on the forecastle head? A. No, sir, just a ship bell.

124. Q. Is that the only means of communication other than yelling that you have between the forecastle head and the wheelhouse, is the bell? A. Yes, sir.

125. Q. Did you do any yelling to the wheelhouse after you took over lookout watch at 1 o'clock? A. No, sir.

126. Q. Did anyone from the wheelhouse yell at you? A. No, sir.

127. Q. Did you hear any shouting or yelling from the other ship before it was hit? A. No, sir I didn't.

128. Q. Did they flash any lights, such as searchlights or blinkers on the ship? A. You mean from the ship we hit?

129. Q. Before the collision did the ship which the Washington eventually hit shine any searchlights or blinker lights? A. No, sir.

130. Q. Now, having in mind at 1 o'clock those lights that were pointed out to you by Smith, did you yourself pick up any other different lights between that time and 2 o'clock? A. Yes, sir.

131. Q. What lights did you pick up? A. I picked up one on the port bow—off the port bow.

132. Q. And you said you picked up one on the starboard? A. Yes, sir.

133. Q. Just before 2 o'clock? A. Yes, sir.

134. Q. When did you pick up this new one on the port side? A. I picked that up before I seen the one on the starboard.

135. Q. Could you make out any side lights, red or green side lights on any of these lights that you yourself picked up? A. No, sir.

136. Q. Were any of these—you know the difference between the masthead and a range light? A. Yes, sir.

137. Q. This one you picked up on the port side, was it showing more than one light? A. Only one.

138. Q. Only one? A. Only one.

139. Q. You stated that you heard and answered the bells struck in the wheelhouse at 1 o'clock and 2 o'clock? A. When they ring the bell—the clock bell—I repeat it.

140. Q. Do they strike a bell with the ship's bell? A. Yes, sir.

141. Q. The clock bell, can you hear the clock bell? A. No, sir.

142. Q. Had you heard a bell other than the clock bell at 1:30 and 2? A. You cannot hear the clock bell, but when it strikes in the wheelhouse they ring the ship's bell there and I repeat them on the forecastle head.

143. Q. That is what I'm trying to get clear—you did hear the ship's bell at 1:30 and 2 and you answered? A. Yes, sir.

144. Q. But you testified that you did not hear the ship's bell answer the bell you use for reporting lights, is that right? A. I didn't hear it, no sir.

145. Q. During the period from midnight to 1 o'clock you were on standby, is that correct? A. Yes, sir.

146. Q. And you spent it back in the crew's quarters? A. In the crew's messhall right by where I could pick up the phone.

147. Q. What did you do back there? A. Standby.

148. Q. Did you have anything to eat or drink? A. No, sir, nothing.

149. Q. No coffee? A. Oh, we—I had coffee, yes, sir.

150. Q. How many cups of coffee did you have? A. I very seldom ever drink coffee.

151. Q. I know, you said you had some. A. I had a couple of cups—usually drink tea.

152. Q. You had a couple of cups this morning? A. Yes, sir.

153. Q. Did you drink it black or with sugar? A. Black.

154. Q. What time did you turn in the night of the 13th? A. The 13th?

155. Q. The occasion of the collision was at 2 o'clock or so on the morning of the 14th. A. I don't know sir.

156. Q. Do you know how many hours sleep you had, if any, before you went on watch? A. Before I went on watch? I went to bed about 5:30, I got up at 11:30.

157. Q. Did you sleep? A. Yes, sir.

158. Q. When you were standing by in the mess hall did you have any messages on the phone from the wheelhouse? A. No, sir.

159. Q. Did you call the wheelhouse? A. No, sir.

160. Q. Did you have any calls from any part of the ship by phone? A. No, sir.

161. Q. Do I understand you to say, that all the reports regarding the lights which you made were all reported, were shouted back to the bridge? A. Out there?

162. Q. Yes. A. I didn't shout back.

163. Q. How did you make your reports to the bridge? A. By bell.

164. Q. Did you report the lights to the bridge? A. By bell, yes, sir.

165. Q. You mean the lights which you saw from your ship, how did you report those to the bridge? A. By the bell on the forecastle head.

166. Q. How did you get on the well deck? A. I don't know that sir.

167. Q. Do you know how long you were on the well deck? A. No, sir.

168. Q. Are you sure that the change in bearing of these lights which you observed was due to a change in course of your ship? A. Say that again sir?

169. Q. You have stated that some lights you sighted were on the port bow? A. Yes, sir.

170. Q. And that they appeared to cross the bow to the starboard? A. One ship.

171. Q. One ship? A. Crossed.

172. Q. You have also stated that your own ship changed course? A. Yes, sir.

173. Q. How do you know your own ship changed course? A. Well, the ship that crossed our bow crossed it—I could see our ship moving over to clear the ship that crossed the bow.

174. Q. What is your best estimate as to the distance off of this ship which crossed your bow—how far was that away from your ship when it crossed your bow? A. Well, the one that crossed from the port side to the starboard side, I'd say it was 8 mile off.

175. Q. Do you know what kind of a ship it was? A. No, sir.

176. Q. Were you sick at all on the day of the 13th? A. No, sir.

177. Q. Had you been hospitalized at all? A. No, sir.

178. Q. When you went on watch were you feeling satisfactory? A. Yes, sir.

179. Q. Feeling well? A. Yes, sir.

180. Q. Feeling as good as you usually do when you go on watch? A. Yes, sir.

181. Q. You have stated that you were lying on the well deck when you came to? A. Yes, sir.

182. Q. Do you have any idea what time that was? A. No, sir, after I rung the four or five bells, from there on I don't know what happened.

183. Q. Did you see this—any vessel just prior to the collision with the—involving the Washington? A. Say that again?

184. Q. Did you see any other vessels just prior to the Washington's collision? A. Before or after, what do you mean?

185. Q. Just immediately before? A. Well, when I was ringing the four or five bells call I could see the Navy ships there, but all I could see of it—and I was all excited—

186. Q. From which direction were they approaching? A. They was approaching us on our starboard bow.

187. Q. Were they running dark? A. Only the lights on the mast that's all.

188. Q. You saw the lights on the mast? A. I did.

189. Q. And in what direction were they approaching? Were they approaching you from dead ahead or from off the bow or abeam? A. Across our bow.

190. Q. Were they crosing from starboard to port? A. Yes, sir.

191. Q. Do you have any idea of what speed, were they going very fast, were they going slow? A. They was going very fast.

192. Q. Do you recall the actual collision? A. You mean when it hit?

193. Q. Yes. A. No. I was all excited.

194. Q. What made you excited? A. Sir?

195. Q. What made you excited? A. You see a ship coming in towards you.

196. Q. Why should that have excited you, other ships have approached you I suppose, why should that particular ship have excited you? A. I don't know, but I don't like being on that forecastle head when anything like that happens; that Navy ship approaching us that way.

197. Q. Was it close enough so that it scared you? A. Yes, sir.

Examination of James Arnold Upton

198. Q. How long had it been in sight before you began to get scared? A. I didn't get scared until I went to ring the bells.

199. Q. Well, about how long had you seen the vessel then before you began ringing bells? A. I'd say four, five minutes.

200. Q. And had you signalled to the officer of the bridge one bell indicating that there was something on your starboard bow? A. Yes, sir.

201. Q. And had he indicated back to you that he had heard your signal? A. That, I didn't hear sir.

202. Q. Does he have any way of informing you that he has heard your signal? A. If he was to call, the phone is down in the forecastle head down by that—I would have to run from the bow all the way down the ladder to the phone and back up.

203. Q. Do you know if anyone on the crew of the Washington involved in this—do you know if anyone who was in the crew of the Washington who was in this collision suffered any casualties? A. Myself.

204. Q. Yourself? What happened to you? What injuries did you suffer? A. My back's bothering me.

205. Q. Your back is bothering you? A. Yes, sir.

206. Q. Where? A. (Witness stands) Right around here sir. (Indicating lower part of back.)

207. Q. Have you received any treatment for that injury since you were on the well deck? A. Yes, I went to a doctor Saturday night.

208. Q. Where? A. Here in Philadelphia.

209. Q. Did you get any treatment at all aboard the ship prior to the arrival in Phliadelphia? A. I got treated for some skin—little cuts on my hip here—and I got some ointment to rub on my back to keep it from getting sore.

210. Q. And who treated you from the ship? A. The captain; also the chief mate.

211. Q. Did you tell them how you got this injury? A. Yes, sir.

212. Q. What did you tell them? A. Well, at the time I was wandering around there; I couldn't feel nothing for maybe a couple of hours later; it was bothering; it hurt, and I told them I was hurt.

213. Q. Well, from the time you picked yourself up off the well deck till you reported to the master of the ship that you were injured, what did you do? A. I reported the accident something around two hours later.

214. Q. You reported the accident about two hours later? A. Two hours, about my back being hurting.

215. Q. From the time you found yourself on the well deck until you turned yourself in to the master reporting that you were injured what did you do, stay on the well deck; did you go back and have coffee; did you go up on the bridge; did you take the wheel? A. No, sir, I didn't steer.

216. Q. How did you spend the time from the time you were on the well deck until the time you reported to the master? A. Well, I was wandering around there, and when I came to my senses I went up to the forecastle head and stayed there until my relief came up, and relieved me.

217. Q. And who relieved you? A. Mr. Smith.

218. Q. And, do you know what time it was that he relieved you? A. Not exactly, no.

219. Q. Do you know whether he relieved you at the time—at the normal time for relieving the watch? A. I think so.

220. Q. Were you required to do any further work after you had reported to the master that you were injured? A. No, sir, I didn't do no more work. He told me to lay around and take it easy.

221. Q. And you did that? A. Yes, sir.

222. Q. Do you know of anyone else besides yourself who was injured? A. No, sir.

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223. Q. Did you at any time prior to the accident, between the time you were on—during the time you were on watch were you able to identify any of these various vessels which were carrying the lights—that is as to size, as to shape? A. No, sir, I couldn't.

224. Q. How do you know this was a destroyer which was bearing down—when did you learn that this vessel which was bearing down on the bow of the Washington, and eventually was in collision with the Washington—how did you know that was a naval vessel? A. Naval vessel? I didn't know until after I come to my senses.

225. Q. During the time that you were on watch on the forecastle as lookout, and prior to the collision, were the conditions as regarding the anchor engine and the other equipment up there normal—that is, were they stowed normal as far as you could see? A. I don't know sir.

226. Q. Did you hear any noise such as the bumping of an anchor chain or anchor against the bow of the ship? A. You mean before?

227. Q. Yes? A. Before we had any accident at all—no, sir.

228. Q. Then, as far as you know both anchors, were properly housed? A. Yes, sir, as far as I know.

229. Q. What sort of visibility did you have that night? A. Sir?

230. Q. What sort of visibility did you have while you were on watch? Was it unlimited visibility; could you see five, 10 miles, 20 miles, or was it thick fog? A. I could see at least five, six mile away.

231. Q. Was there a bright moon? A. That, I don't remember.

232. Q. What was the weather like—windy? A. It was a little windy, yes.

233. Q. What was the sea like? A. Calm sea.

234. Q. Do you feel that the reason you went up on the well deck was because of the collision and not because

of having been thrown there by some other force than the collision? A. Yes, sir.

235. Q. Did anyone come to your assistance when you fell in the well deck? A. I don't know sir.

236. Q. When you went back up on the forecastle head after the collision, where was the Navy ship? A. It had done pulled away. The Navy ship had pulled away. I don't know what happened--who pulled away, first—I don't know.

237. Q. Could you see the Navy ship at all? A. Yes, you could see it off the distance.

238. Q. How far off could you see the ship itself? A. Could see part of it.

239. Q. Where was it? With respect to your position on the forecastle? A. I would say it's about one point off.

240. Q. On which side? A. Port.

241. Q. Port side? Well, when you went back up on the forecastle head after the collision did you observe any change in the condition of material or equipment on the forecastle head? A. I was so rum-dum, I don't know, I was addled, I didn't know whether I was coming or going.

242. Q. When did your mind clear up? A. I know what I was really doing? It was about two or three o'clock that afternoon.

243. Q. Was the ladder to the forecastle head or the ladder which you used going up and down the forecastle head bent or twisted in any fashion? A. That, I don't know.

By the Recorder:

244. Q. When you reported the light on the port side to the second mate did he answer by a bell stroke? A. No, sir.

245. Q. Well, is it customary when you report a light for the second mate to answer you or any of the mates on

watch to answer you in any particular fashion? A. No, sir.

246. Q. He didn't answer with a bell stroke? A. He can't see the light, he gets his binoculars.

247. Q. But it's not customary for him to answer with a bell stroke or shout to you? A. No, sir.

By Mr. Brush:

248. Q. Mr. Upton, what was the name of the doctor that you saw Saturday night? A. Dr. (refers to paper in wallet) Charles H. Barnett, 1022 Spruce Street, Philadelphia.

249. Q. Last evening you were examined at the Public Health Station across the street were you not? A. Yes, sir.

250. Q. And then you were taken by Captain Mackey and me to St. Agnes Hospital? A. Yes, sir.

251. Q. Now, sometime thereafter, after we left, you received a visitor, did you not? A. Yes, sir, I did.

252. Q. Do you know who he was? A. No, sir I don't.

253. Q. Could you describe him for us? A. He was something around five-and-a-half foot tall, fair complexion, had a Navy uniform on.

254. Q. And, did he have a conversation with you? A. Well, he asked me was I on the Washington? I said I was. He said "Well, how did this accident happen"? I said, "Well, be in court tomorrow and you'll find out.

255. Q. What time of the evening was this? A. It was something between, I'd say between 8:30 and a little after 9.

256. Q. Where were you at the time? A. In the hospital.

257. Q. What sort of a uniform did he have on? A. As far as I know he had a blue—white shirt.

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258. Q. Was it an officer's uniform or an ordinary sailor's uniform? A. He had two stripes here, I did notice that. (Indicating right arm.)

259. Q. Did he give his name? A. No, sir. He said he had checked the ship and I wasn't on board.

260. Q. And you were not on board? A. Yes, sir.

261. Q. Did he say he was from the Navy? A. He said Navy Department, that is all he said.

262. Q. Navy Department, but he didn't give you his name? A. Yes, and he asked about the circumstances of the collision.

Mr. Brush: That is all.

Board: Mr. Lanning do you have any questions?

Mr. Lanning: No questions.

Board: Mr. Holden, do you have any?

Mr. Holden: No.

Board: We'll take about a five-minute break here.

(The board recessed at 11:15 for five minutes.)

(This reporter relieved by Irving Levine, SN (CR) USCG.)

(Irving Levine SN(CR) USCG entered as reporter relieving Thomas A. Keeley, YNC(CR) after a five minute recess.)

By Mr. Brush:

263. Q. Mr. Upton, were you served with a subpoena by the Coast Guard? A. I was.

264. Q. When? A. Saturday.

265. Q. And have you been under subpoena since that time? A. Yes, sir.

266. Q. To appear here and testify? A. Yes.

Mr. Brush: That is all.

By Cdr. Schlegel:

267. Q. Mr. Upton, that man that you described as a Navy officer with two stripes that visited—where did he visit you and when? A. In Saint Agnes Hospital.

268. Q. And when? A. Last night.

269. Q. Last night? A. Yes.

270. Q. Do you know what kind of an insignia he was wearing on his sleeve? Was it a star or like a shield like those gentlemen are wearing? A. It wasn't a shield.

271. Q. Do you know what it was? A. No, sir, I don't.

272. Q. Can you describe it at all? A. I didn't see a star, just the uniform with them two stripes on it.

273. Q. How do you know you didn't see a shield? If you didn't see a shield I'd like to know what it is, its description? A. I didn't see anything on his arms whatsoever. No shield or no star. I did notice the two stripes.

274. Q. You know there were two stripes but whether he was wearing a shield or star or what type of insignia he had you don't know? A. I don't know sir.

275. Q. Do you know what kind of insignia he was wearing on a cap, or did you see a cap? A. He had it in his hands.

276. Q. Can you describe the insignia he had on it, was it a shield that was on it? A. I didn't see the shield or anything on his hat.

Cdr. Schlegel: Let me make a statement for the record at this time on behalf of the Navy Department. I have no personal knowledge of who this individual was who called upon Mr. Upton. The Secretary of the Navy has directed that witnesses shall not be subpoenaed for the Navy Court of Inquiry. The Secretary of the Navy has indicated in this particular case his well established policy of conforming with the regular rules of Civilian Admiralty

practice of not attempting to contact the witnesses of the other side unless he has the permission of counsel for parties concerned. I have no explanation as to who contacted Mr. Upton. If he was anybody in the Navy I presume that he was someone that has started a separate investigation from some involved command without receiving proper clearance from the people who were actually doing the work. Since you have given no statement I think that there is no harm done and I shall take official action to see that anybody who may have been involved in the Navy in this matter will be properly advised so that the incident is not repeated, assuming that there was a Navy man in it which apparently I can't determine at this time.

Mr. Brush: May I simply remark that I do not know who this individual was. I simply thought that since Mr. Upton was under subpoena to appear here and testify since Saturday, that the Board should be informed of that. I do know, however, with respect to your statement as to the general policy of the Navy Department, that the Legal Officer for the Third Naval District, accompanied by two other officers appeared aboard the Washington on Saturday, immediately upon the arrival of the vessel and asked to interview the officers and crew of the Washington. I thought that was quite irregular and was surprised. I informed them that they would not be permitted to interview so that I have no general knowledge of the policy of the Navy. I should hope it would be the policy of the Navy not to permit such action.

Cdr. Schlegel: Was this the Legal Officer of the Third Naval District you say?

Mr. Brush: He described himself as the Legal Officer of the Third Naval District. I don't remember his name.

Lt. Wilkin: That is the Legal Officer of the Navy yard, but he is attached to the Fourth Naval District here.

Mr. Brush: Yes, the Fourth Naval District.

Cdr. Schlegel: I'll take appropriate action to see that everybody in the Fourth Naval District is duly instructed so that the incident won't be repeated, an' I can only reassert the policy and the good intentions of the Navy Department concerning the problem. It is simply one of indoctrination I gather and certainly the Fourth Naval District people will be indoctrinated on that score so that the incident isn't repeated during their regime.

By Cdr. Schlegel:

277. Q. Mr. Upton, will you tell me the direction the wind was blowing as you were standing out on the forecastle head of the Washington? A. I think it was blowing straight ahead.

278. Q. How was the temperature that night? A. That I don't know.

279. Q. Was it warm or was it cool? A. It was pretty cool.

280. Q. Now, as you stood at the bell, how far were you from the foremost part of the ship, the bow? A. I'd say 15, 16 feet.

281. Q. And were you standing on the deck as you stood by the bell? A. What do you mean, sir.

282. Q. You didn't have a box there to raise you up from the deck; your feet were on the deck? A. Yes, sir.

283. Q. As you stood at the bell looking forward over the bow— A. I was up forward looking towards—

284. Q. No, I'm talking about at the time you were standing at the bell. At that time can you tell me how far ahead you would have to look over the ship as she was loaded at the time in order to see the water. Do you see what I mean. You're standing here. You have the bow here, and somewhere there is a blank area; you're looking down over the bow and there is some water. You can't see immediately under the bow I presume. Can you tell me how far out over the water you have to look before you can see? A. Quite a long ways.

285. Q. Quite a long ways? A. Yes, sir.

286. Q. This ship you say that you saw at about 2 a.m. about 3 points off the starboard bow, you gave one bell. This was the same ship are you certain that you again reported a few minutes later? A. I reported the same light twice.

287. Q. That you reported the first about 2 a.m.? A. It was something a few minutes before.

288. Q. A little before 2 you reported it the first time and that is when she was off your starboard bow? A. Yes, sir.

289. Q. And then a few minutes later you reported the second light or you reported the same light a second time? A. Yes, sir.

290. Q. Do you remember about how many minutes there was in that interval? A. I'd say around 10 minutes.

291. Q. And then from the time that you reported it the second time about how long was it until you began to ring the bells as fast as you could as she was coming in on you? A. Well, it was when I could just see the bow of their ship.

292. Q. And how far off was that bow about that time your best guess? A. That I don't know myself, just how far.

293. Q. Do you think it was as much as a mile or a half mile? A. No, it was no mile.

294. Q. Was it a half mile; do you think that far? A. No, sir.

295. Q. Could you actually see the bow of the ship; the outline of it, the silhouette? A. When I was standing looking I could see their bow and at the time—and the time I rung the bells I don't know anything else from then on.

296. Q. During this time now from a little bit before 2 o'clock in the morning until you blacked out you had been watching this one light coming closer to you, is that right? A. I was watching that one light and observing all that I could see in sight.

297. Q. But you had that one particular light under—you knew where he was at all times? A. How's that again?

298. Q. You knew what this one light was doing; you were keeping generally familiar with the whole area and with this one light? A. I was watching the lights I had reported.

299. Q. On any of these other lights that were around did you have any occasion to report any of them a second time? A. No, sir. The reason I reported that one on the starboard it was approaching us very fast.

300. Q. He seemed to be closer to you all the time? A. Yes, sir.

301. Q. And after you reported it the second time about how long was it until the time of collision or until he got so close that you blacked out? A. How's that?

302. Q. You first reported the light about a few minutes before 2 and then about 10 minutes later you said you reported the same light a second time? A. Yes, sir.

303. Q. And then a little bit later on you blacked out when he came so close and you had the collision. Now, how long was it from the time you reported this second light or from the time you reported this light the second time until you blacked out, just a guess? A. You mean after I rung the bell?

304. Q. That's right, you rang the bell a second time, did you still see this light over here? A. Yes.

305. Q. And from that time how long was it until you lost consciousness? A. I don't know sir.

306. Q. Was it a half hour? A. No, sir.

307. Q. Was it 10 minutes? A. I don't think quite 10 minutes.

308. Q. Was it more than 5 minutes? A. I'd say around 7, maybe 8 minutes.

309. Q. 7 or 8 minutes from the time you rang the bell the second time until you blacked out? A. Yes, sir.

310. Q. Now, how long were you at the bell this third time ringing the bell very violently to try to tell him that he almost on us? A. I rang the bell about 4 or 5 times and I went out. I don't know what happened.

311. Q. It was just a matter of seconds that you were ringing the bell then before you blacked out? A. Yes, sir.

312. Q. During all this time from a few minutes before 2 in the morning when you reported the light the first time until you blacked out, had you tried to contact the bridge or anybody else aboard the ship by voice or any other means besides ringing the bell? A. No, sir.

313. Q. Had there been anybody else on the forecastle head with you at any time from 1:30 on that morning until you blacked out? A. No, sir.

314. Q. Did you have a pair of binoculars while you were on the forecastle head standing watch? A. No, sir.

315. Q. Is it customary for you to stand watch aboard the vessel without binoculars and simply using your naked eye? A. It's only that, I have ever used.

316. Q. Do you wear glasses? A. No, sir.

317. Q. Can you read the top three cards back there on that board? (Indicating a placard board in the rear of the hearing room.) A. (Reading) "Claim, Record, Certified."

(The cards read, Claims; Recording; Certification.)

318. Q. That is good enough; that is fine. Now, as this one light was coming closer and closer to you; the one that you reported first a few minutes before two a. m. and then about ten minutes later, and then about six or seven minutes later on by ringing the bells four or five times when he was right on you, what had these other ships been doing that you also noticed in the area? A. The other ships was off a distance.

319. Q. How far off were they? A. Well, that is something I can't guess, these ocean miles.

320. Q. Had you come closer and closer to them during the time that this other ship was coming in on you, can you tell that? A. After that ship was coming in close I kept my eye on that one ship at the present time but I was viewing the other ships in the stern of the ship which was on the starboard bow. (Witness draws sketch.) Our ship was here, a ship here and these few lights also starboard.

Recorder: He says his ship was so, this ship was coming in on him and just a few lights on the—I'll call it the stern of that other Navy ship whatever it was at the present time; a few lights here but these weren't coming any closer.

By Commander Schlegel:

321. Q. In other words you had some lights astern of the Navy ship? A. Yes, sir, just a few.

Commander Schlegel: Will it be all right if I draw this outline for him?

The Board: Yes.

(Commander Schlegel places ship models on sketching paper and witness places them in their respective positions. Commander Schlegel then draws around models.)

By Commander Schlegel:

322. Q. This is your ship labeled the Washington, and this the Navy ship labeled "Navy". Now, about how far would you say it was, at the time you made this observation, between the closest points of the two ships, the Washington and the Navy? A. You mean before anything happened?

323. Q. Yes. At the time that you saw the ships like this how far do you think they were apart? A. You mean—

324. Q. When you saw the lights over on the stern there—what I want you to do—suppose we approach it this way. You said when the ships were in this position that you saw some other lights over off the stern of the Navy ship. Now, can you take this pencil and show me approximately where you saw those lights off the stern of the Navy ship? A. (Witness indicates.)

325. Q. What kind of lights did you see over there? A. You could only see white lights.

326. Q. How many white lights did you see? A. Well, I don't recollect just how many.

327. Q. Did you see more than one? A. Yes, sir.

328. Q. Did you see two? A. More than two.

329. Q. Did you see three? A. I saw around four or five lights.

330. Q. Four or five lights. Will you draw here just a little round circle showing where you saw each one of those lights as best you can remember? A. To my best of knowledge I'd say— (Witness indicates as requested.) It looked like fishing boats to me.

331. Q. Now, at the time everything looked like this to you, about how far would you estimate it was between the Washington and the Navy ship? A. You mean before the accident happened?

332. Q. At the time you saw the Navy ship here you were standing— A. Before I could see it?

333. Q. That's right, as you were standing here and as you were standing up in the forecastle head it looked to you like the Navy ship was over here and you could see 1, 2, 3, 4, 5, lights off her stern, and now at that time how much distance do you think there was between you and the Navy ship? A. I'd say there was about 50, 60 feet.

334. Q. 50 or 60 feet at that time? A. Yes, sir.

335. Q. And how much distance do you think there was between you and these lights? A. Well, I'd say a mile.

336. Q. A mile? A. Yes.

337. Q. And about how long was it before you blacked out that you made this observation? A. From here to there?

338. Q. Yes. A. I run back to the bell.

339. Q. That was just a matter of seconds? A. Yes.

340. Q. Is that the way it looked? A. Yes.

341. Q. And at this time was the last clear view you have of the Navy ship coming in on you? A. Yes, sir.

Commander Schlegel: I'd like to have this introduced into evidence.

342. Q. Will you sign this please? A. Yes. (Witness complies.)

(Sketch of positions of vessels by James Arnold Upton was submitted to the board and to the parties in interest and by the recorder offered in evidence.)

(There being no objection, it was so received, and marked Exhibit No. 10.)

By Commander Schlegel:

343. Q. Mr. Upton, at the time you observed the Navy ship and these lights from the Washington's bow when the Navy ship was 50 or 60 feet away from you as you

have indicated on this sketch, can you tell—on the exhibit, can you tell me if you saw any lights dead ahead or off to port? A. You mean—

344. Q. When the Navy ship was 50 or 60 feet away from you as you indicated here on this exhibit, do you remember whether you saw any lights or any ships dead ahead or over to port? A. That I don't know sir. I was all excited.

345. Q. Do you recall when before this time you last remembered seeing any ships dead ahead or off to port if you do remember seeing any? A. Before anything happened I seen that cross the bow.

346. Q. You say you saw that cross the bow, what do you mean? A. The light cross.

347. Q. You saw one light cross your bow and about how long was it before this collision happened? A. I don't know sir.

348. Q. Was it a long time, was it as much as a half hour? A. That was the one I explained to them. It was around 1:15, I'd say. I don't know, just guessing about what time.

349. Q. And you don't recall any other lights passing you or over on your port side going from starboard to port, passing you dead ahead or over on your port side after about one o'clock? A. I don't know sir.

350. Q. I think you said that about 1:15 you had this vessel that passed across your bow coming from your starboard crossing your bow toward port? A. Coming from port to starboard.

351. Q. Port to starboard about 1:15. Did you at any time from the time that vessel passed ahead of you make any report of vessels dead ahead or a vessel dead ahead? A. When I reported that light I rung two bells for the port bow.

352. Q. After that did you ever make any report of a vessel dead ahead or vessels dead ahead before the collision? A. No.

353. Q. How would you make a report of a vessel dead ahead? A. Three bells.

354. Q. And you never gave a three bell signal at any time during the hour before the collision? A. No, sir.

355. Q. How long have you been aboard the Washington? A. November the 8th, 1952.

356. Q. You joined her in the Gulf on this present voyage? A. Yes, sir.

357. Q. Did you receive any instructions at all after you boarded the Washington as to the manner in which you were to conduct your lookout duties on the forecastle from anybody aboard the Washington? A. No. When I first come aboard the mate on watch always asked the ordinarys, the a.b.'s and quartermasters names of the watches.

358. Q. And your job as you understood it if I understand you correctly, was to be up on that forecastle and ring one, two, or three bells indicating whatever you might see ahead of you? A. Yes, sir.

359. Q. Did you have any orders or instructions about making sure that anybody aboard that ship heard those bells? A. I was to ring it loud enough so the mate on watch can hear it.

360. Q. And did you have any way of knowing whether or not he did hear the bells when you rang them? A. No, sir.

361. Q. As you were standing on the forecastle by the bell ringing it during these last few seconds or whatever it may have been before the collision, do you recall whether your vessel made any noticeable engine changes? A. No, sir, I didn't.

362. Q. Do you know what speed or how her engines were going before the collision? A. No.

363. Q. All you know was that she was going forward? A. Yes, sir.

364. Q. When you are up there if the engines are placed in reverse; from ahead to full astern, could you tell by

vibration or in any other manner whether or not there was an engine change being made? A. That I don't know sir. At this time I was all excited.

365. Q. But usually, assuming that you are not excited, just as you stand up there normally, when they make an engine change can you usually feel a vibration or something that tips you off that there is a change of engines being made? A. Yes, sir, I could.

366. Q. And you don't recall anything of that nature happening that night before the collision or before you blacked out? A. I don't recall sir.

367. Q. How fast do you think the ship that you were in collision with was actually travelling as she was coming in? A. I don't know.

368. Q. Was it fast or slow? A. Coming pretty fast is all I can say.

369. Q. And in view of the fact that she was coming in pretty fast and appeared to be coming closer to you, was there anything that you could have done between ringing of the second bell, telling them that you still had the light, until you rang the bell again rapidly 4 or 5 times just before you blacked out? A. Not that I know of sir, just the bells, that is all.

370. Q. Did you try shouting to the bridge? A. No, sir.

371. Q. If you had shouted do you think you could have been heard? A. That I don't know.

372. Q. Are you able normally to be heard if you shout from where you were standing by these people on the bridge? A. I don't know.

373. Q. How far is it from where you were standing on the forecastle head, as you stood this watch, to the bridge where the mate would be, in that vicinity? A. That I don't know just how far it is.

374. Q. Did the thought of shouting ever occur to you as you watched the ship closing with you? A. Yes, sir.

Examination of James Arnold Upton:

375. Q. Why didn't you shout? A. After I rung the second bell I thought about it but I couldn't get it out.

The Board: It's 1145 now, we'll adjourn now and reconvene at a quarter of one.

The Board adjourned at 1145, 18 November, 1952.

The Board reconvened at 1300.

All members and parties in interest who were present when the Board recessed for lunch are present.

The witness was warned that his oath is still binding.

By Cdr. Schlegel:

376. Q. Mr. Upton, you said earlier that you heard whistle signals from the Washington before you blacked out. Can you tell me about how long it was between hearing the first blast made of these whistle signals and the time that you blacked out? A. What do you mean, sir.

377. Q. How long was it between the time you first heard them making a whistle signal on the Washington and the time that you blacked out? A. I'd say it was around after 1: just about a minute or so after I rung the second bell for the same light.

378. Q. And how long was it from the time that you heard the last whistle signal made by the Washington until you blacked out? A. I don't know.

379. Q. Was it very long, was it 5 minutes or 5 seconds? A. It wasn't that long.

380. Q. Was it as much as 2 minutes, 3 minutes, 1 minute, what ever your best estimate is? A. Around 5 or 6 minutes.

381. Q. How much? A. Around 5 or 6 minutes.

382. Q. Around 5 or 6 minutes? A. Yes, sir.

383. Q. Do I understand you correctly to be saying that you made your second signal with the bell— A. Yes, sir.

384. Q. —and then about a minute or maybe two minutes after that your ship made some whistle signals— A. Yes, sir.

385. Q. —and then it was about 5 or 6 minutes from the time those whistle signals stopped until you blacked out? A. I didn't have no watch or anything up there.

386. Q. That is your best estimate of the situation? A. it could have been that long; it may not have been that long, I don't know.

387. Q. But that is your best guess as to the relative periods of time? A. I wouldn't say exactly but it may have been 4, 5, 6 minutes, I don't know.

388. Q. For how long a period of time do you think the whistle signals were being made? I mean from the first blast until the last blast by the Washington? About how long a time do you think is involved in that? A. I heard the short blast.

389. Q. You heard what? I didn't get the answer? A. The short blast. I don't know the period of time.

390. Q. Were the blasts separated? I mean did they all come in fairly regular intervals or did you hear one set of blasts and then a pause and then another set of blasts? A. I heard two short blasts right together.

391. Q. Two short blasts right together? A. Yes.

392. Q. And then what was the next thing that you heard? A. I don't know if a long one or a short one. I don't remember.

393. Q. And how long after the two short blasts was it that you heard this next whistle, whatever it may have been? A. Just a few moments.

394. Q. You say a few moments, do you mean a few seconds or a few minutes or what do you mean? A. I'd say around two or three minutes.

395. Q. So that first you heard two short blasts and then in something from two to three minutes you heard some other whistle signal that you heard this two or three minutes later. Can you tell me whether there was more than one blast in that whistle? A. Yes, there was more than one blast.

396. Q. Was there more than two? A. I don't remember, sir.

397. Q. There was at least two, you are sure of that? A. Yes, sir.

398. Q. And these were long blasts as contrasted with the first signal which you heard and described as short? A. Yes, sir.

399. Q. You said that the Washington changed course. I believe you estimated about 10 degrees to the right temporarily and later came back on her regular course? A. Yes, sir.

400. Q. Can you estimate about how long you think she was off course? A. Not very long.

401. Q. A matter of how many minutes, a guess? A. Oh; I don't know. I'm not very good at that.

402. Q. Was it 10 minutes, 20 minutes, 35 minutes? A. I'm afraid to say. I don't know.

403. Q. Did you have any way of telling to your own satisfaction when she changed course and when she came back on course. That is, were you looking at any lights or anything which gave you in your own mind an accurate object on which to determine any course change? A. I don't remember sir.

404. Q. What was the last thing you remember before blacking out? A. Ringing the bells.

405. Q. When was the last time before the collision that you made any bell signals indicating ships on your port

side if you had any? A. Well, I'd say something around 1:15.

406. Q. That is the last time you recall seeing any ships on your port side or ringing a bell for ships on your port side? A. Yes, sir.

407. Q. And for how long after making that bell signal indicating ships on your port side at 1:15 do you remember seeing those ships which you reported by bell off to port? A. It went on across the bow and I never seen that come no more.

408. Q. Did you see any other ships on your port side after that one? A. Yes. I saw two or three lights over. I didn't see the ships, just the lights.

409. Q. When was it that you saw these 2 or 3 lights over on the port side? A. The same time I reported that one that was coming across the bow.

410. Q. The one coming across the bow. You mean the one which you were in collision with? A. When I reported one light if they all run together that means all of them. That is the way I report.

411. Q. So that at the time you made that report at 1:15 you had one light that was crossing your bow from port side to starboard and in addition you had some two or three other lights off to port? A. In the same instance when I reported that one light.

412. Q. Right. Now, what happened to those other two or three lights that you reported, as you can best recall? A. Well, they seemed like to me they was in the same spot all the time.

413. Q. You mean their bearing was not changing? A. No.

414. Q. You or yourself on them as you proceeded on? A. Yes, sir.

415. Q. And when was the last time before the collision that you recall seeing these several lights off to port? A.

Them lights as we were going ahead they was coming more like we were passing them, coming further down; I'd say around 3 points and then about 3½ points, the last I saw of them.

416. Q. You say they were passing you. You mean they were passing you from your port to starboard or from starboard to port, or how? A. I couldn't say if they were passing us or not.

417. Q. Your last recollection of them then is still being on your port side? A. On the port side.

418. Q. And how long before the collision or before you blacked out was it that you recall last seeing these vessels when they were on your port side? A. They were still on our port side and some on our starboard side also.

419. Q. At what time? A. When I reported.

420. Q. When you reported, and at what time did you make this report? A. The ones I saw on the starboard bow they seemed like to me they was just sitting there, anchored. I don't know, I couldn't swear, nothing like that.

421. Q. All you know is that they seemed to be in the same position to you all the time, their lights didn't change? A. But this one light coming from the starboard side.

422. Q. The one light that you followed and that came in collision with you kept changing? A. Yes, sir.

423. Q. Coming closer all the time? A. Coming closer.

424. Q. These other lights all stayed in the same general position to you? A. Well, I wouldn't say that but they seemed like moving certainly very little.

425. Q. I see. Now, these lights that were moving just very little were part of them on the port side? A. Yes, sir.

426. Q. How many of them were on the port side? A. Two or three, three or four, something—I don't know exactly how many.

427. Q. And how long before the collision was it that you last remember seeing these 2 or 3 or 3 or 4 lights over on your port side somewheres? A. Around 1:15.

428. Q. You don't recall seeing these lights on your port any time after 1:15? A. Yes, I saw them until about 1:30.

429. Q. You saw what, still 2, 3, or 4 of them around 1:30? A. It seems the lights went out, I don't know what happened.

430. Q. You saw them about 1:30? A. Yes.

431. Q. Do you recall seeing them any time after 1:30? A. No, sir.

432. Q. At 1:30 did there seem to be more of a concentration of lights on your starboard or your port side? A. What do you mean sir.

433. Q. In other words, about 1:30 when you didn't notice these lights any more over on your port side; just before you lost sight of the lights on the port, did it seem while standing up on the forecastlehead that there was more lights over on the starboard side than there were over where you saw these two, three, or four lights on the port side? A. Yes, sir, there were.

434. Q. About how many more, can you estimate? A. No, sir.

435. Q. You said a little while ago after you went on the poop deck you didn't know exactly when— A. What would you call the poop deck?

436. Q. Wherever you went after the collision. Where did you go after the collision. What I'm getting at is that you said a while ago that after the collision you got up and were stirring about and you saw the ship off in the distance which you presumed which was the Navy ship you had been in collision with, is that right? A. Yes, sir.

437. Q. Now, at the time you saw this Navy ship off in the distance, did you notice what lights she had on? A. No, sir. I did not.

Examination of James Arnold Upton

438. Q. Did you notice whether she had a white light? A. I was still addled. I don't know what I saw.

The Board: Does anyone else have any further questions of this witness?

Mr. Brush: No.

Cdr Schlegel: No.

By the Board:

439. Q. Is there anything further you wish to state which has not been brought out in this Board so far that you think should be a matter of evidence? A. No.

(Neither side, the parties in interest nor the Board desired to further examine the witness.)

(The witness was duly warned, dismissed, and he withdrew.)

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No. [redacted]

Office - Supreme Court, U.S.
FILED
JUN 7 1957
JOHN T. FEY, Clerk

Nos. 7284, 7285 and 7286

IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA, AS OWNER OF THE U. S. S. RUCHAMKIN, *Appellant*

v.

THE TEXAS COMPANY, OWNER OF THE TANKER WASHINGTON, *Appellee*

THE TEXAS COMPANY, OWNER OF THE TANKER WASHINGTON, Appellee

v.

THE UNITED STATES OF AMERICA, OWNER OF THE U. S. S. RUCHAMKIN, *Appellant*

EVELYN ECKERT, AS ADMINISTRATRIX OF THE ESTATE OF EDWARD JAMES ECKERT, JR., DECEASED et al, *Appellants*

v.

THE TEXAS COMPANY, *Appellee*

APPENDIX ON BEHALF OF APPELLEE, THE TEXAS COMPANY AS OWNER OF THE TANKER WASHINGTON

BAIRD, WHITE & LANNING
Proctors for Appellee
National Bank of Commerce Bldg.
Norfolk, Virginia

Counsel:
JOSEPH M. BRUSH
FRANCIS N. CRENSHAW

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

THE TEXAS COMPANY, owner of the tanker WASHINGTON, *Libelant*

v.

Admiralty Nos. 953 & 954

THE UNITED STATES OF AMERICA, owner of the USS RUCHAMKIN, *Respondent*

INTERLOCUTORY DECREE

The above entitled cause, together with libelant's Petition for Limitation of or Exoneration from Liability (Civil Action No. 1203), libel by the United States of America as owner of the USS RUCHAMKIN against The Texas Company (Civil Action No. 780) and certain death cases instituted against The Texas Company (Civil Actions Nos. 1217, 1218, 1219, 1220, 1221, 1222, 1230), having come on to be heard by the Court on the pleadings and proofs of the respective parties and claimants, and having been argued and submitted for decision, and due deliberation having been had thereon, and the court having decided that the collision was caused solely by the fault of the United States of America and its agents and employees in charge of the USS RUCHAMKIN, the USS HOLLIS and the USS FREMONT, and that the said collision was not caused or contributed to by the negligence of The Texas Company, its officers and employees or those in charge of the SS WASHINGTON, and the court having, on April 17, 1956, filed

herein a memorandum setting forth its findings of fact and conclusions of law, it is now, on motion of Francis N. Crenshaw, one of the proctors for The Texas Company.

ORDERED, ADJUDGED and DECREED that the libelants recover of and from the respondent, the United States of America, the damages which it sustained by reason of the collision between the USS RUCHAMKIN and the SS WASHINGTON on November 14, 1952 together with interest thereon and costs; and it is further

ORDERED that this cause be continued for further proceedings.

ALBERT V. BRYAN
United States District Judge

Dated at Alexandria, Va. this 11th day of May, 1956

We ask for this:

FRANCIS N. CRENSHAW
Proctor for The Texas Company

No objection as to form:

L. S. PARSONS, by T. F. MCGOVERN
United States Attorney

(Tr., p. 28)

RALPH STONE SMITH, a witness called by the Government, * * *.

(Tr., pp. 34 & 35)

CROSS-EXAMINATION

By MR. CRENSHAW:

Q. Mr. Smith, can you tell me how far at sea off the Virginia Capes Camp Pendleton might be?

A. Will you please rephrase that question?

Q. Could you tell me how far at sea off the Virginia Capes Camp Pendleton might be?

A. Camp Pendleton is on the shore; it's about three miles south of Virginia Beach.

Q. On the beach?

A. Yes, sir.

Q. Now what was the name of your office with ComPhibLant?

A. I was the Public Information Officer on the staff of ComPhibLant.

Q. I noticed that you were interested in getting this information up around the Fort Devan area. Is that so that the people at home will know what their boys are doing?

A. Correct, sir.

Q. And your office tries to keep up good public relations between the military and the home folks in letting them know that their boys are being trained; is that correct?

A. Correct, sir.

* * * * *

(Tr., p. 45)

ARTHUR JAMES GREEN, a witness called by the Government, * * *.

CROSS-EXAMINATION

(Tr., p. 54)

Q. Now would you read the title under the words Part One?

A. U. S. Naval Control of Shipping in Time of Emergency or War.

Q. That title included the paragraph 111 from which you read, did it not?

A. Yes, sir.

* * * * *

(Tr., p. 69)

BRUCE WAYNE PRITCHARD, C.I.C. USS FREMONT, a witness called by the Government * * *.

DIRECT EXAMINATION

BY MR. MCGOVERN:

(Tr., p. 72)

Q. Do you remember the events leading up to the collision between the contact Fox, also called Raid Fox, also called Skunk Fox, and the RUCHAMKIN?

A. Well, we held Skunk Fox, or Raid Fox several times during the night, but we didn't know the whereabouts of the RUCHAMKIN, and this Raid Fox, they had been steaming more or less in the same general direction that we were, and they were giving us no trouble whatsoever, and then they started to close on us. I guess around twelve or thirteen miles, and then we started plotting the RUCHAMKIN, the Raid Fox, and when she got in about, oh, five or six miles,

we lost her. We no longer held it and then shortly afterward the collision occurred.

* * * * *

CROSS-EXAMINATION

(Tr., pp. 75 & 76)

Q. Now on the VK-2, it looks like it's a rectangular surface which I'm only assuming now that that is the top of the radar; is that correct?

A. That's correct.

Q. Within that square surface is there a circular—

A. There is a circular.

Q. —area?

A. That is the P.P.I. scope, the circular area.

Q. About how big is the P.P.I. scope on the VK-2?

A. Oh, I would say—I don't remember just right off-hand.

Q. Is it about this big, indicating about twenty-four inches?

A. No. No, it must be more like this.

Q. About twelve inches?

A. Approximately twelve inches.

Q. Now there is a way by which you can plot right on top of that surface with a grease pencil?

A. Yes, there is.

Q. Is that what you were doing on this particular evening?

A. Yes.

Q. Now a grease pencil, as I understand it, you can mark an X on a smooth surface like this cellophane, and then it will show up very clearly; is that correct?

A. Yes, we had a system that we had a dial light,

you could turn it up or down, and when you turned the light up you could not see the contacts that were on the scope, but you could see your grease pencil marks and—

Q. I see.

A. And you would take your grease pencil, and leaving your dial lights down, make a spot over the contact and then turn your light up and continue his relative motion on it.

Q. So that by means of observing this VK-2 repeater and by application of successive grease pencil dots, you would have a picture of the relative movement of any given target with respect to your formation?

* * * * *

(Tr., p. 85)

EUGENE I. RICKER, C.I.C. USS RUCHAMKIN, a witness called by the Government * * *:

DIRECT EXAMINATION

(Tr., pp. 87, 88, 89, 90 & 91)

Q. Tell us what the C.I. net was and what guarding it means.

A. That is a Combat Information net. Its intercommunication between all the ships in the convoy.

Q. What does guarding it mean?

A. Standing and listening watch on that.

Q. While you were on watch, did you receive any report on the C.I. net pertaining to what is called Raid Fox? Some people call it Skunk Fox, some people call it Contact Fox. By this I mean the same vessel in all cases, the tanker which eventually collided with the RUCHAMKIN?

A. No, I did not receive nothing on it.

Q. Did you transmit any reports pertaining to Raid Fox on the C.I. net?

A. Yes, I did.

Q. What was the first occasion and explain how it came about.

A. The initial report I sent out was initial range and bearing to the contact and I asked another ship to report it. However, they did not hold it.

Q. What other ship did you ask, if you remember?

A. It was SAN MARCOS.

Q. M-A-R-C-O-S?

A. Yes.

Q. Was the SAN MARCOS another ship in your formation?

A. That's right.

Q. What does it mean to a lay person that you asked her to hold the contact and she said she wasn't able to hold it?

A. That means that she did not have it on her radar.

Q. Did you send out a report over the C.I. net of the contact Fox as it was plotted by your radar room on the FREMONT?

A. Yes. It's customary that if the ship you asked to report the contact does not hold it, then the Flag vessel commences to report it, so I sent out a course and speed and C.P.A. of the contact.

Q. Where did you get this information you sent out? Did you plot it yourself, or was—

A. No, it came from the dead reckoning tracer.

Q. And where were you standing with relation to dead reckoning tracer when you sent it out?

A. I was stationed to the right-hand side of it.

Q. Did you send out a second amplifying report on the C.I. net?

A. Yes, I did.

Q. What was that report about?

A. That was the same as the first report, only the contacts, C.P.A. had changed, and I corrected my first report.

Q. C.P.A. means Closest Point of Approach?

A. That's right.

Q. Is that a prediction which is sent out from your plotting room?

A. That's right.

Q. It hasn't happened yet?

A. No.

Q. You predict it, if the vessels maintain their course and speeds as they are plotted by your room, they will reach a Closest Point of Approach at a particular time in the future; is that correct?

A. That is right.

Q. Now did you send out any further reports on the contact?

A. No, that was all.

Q. Now did you hear any transmissions regarding the location of the RUCHAMKIN?

A. No, I did not.

Q. Let me get back to your amplifying report. Was the first Closest Point of Approach a collision with another vessel in your group?

A. Yes, the first one was on collision with the CAPRICORNUS.

Q. Did that collision actually occur?

A. No.

Q. What was the second report?

A. Passed seventeen hundred yards ahead of the CAPRICORNUS.

Q. Now, was the reconciliation between your first report with respect to CAPRICORNUS, which was that a collision was predicted to occur with the CAPRICORNUS, and the second report which was that the contact was going to pass seventeen hundred yards ahead of the CAPRICORNUS?

A. I don't believe I understand.

Q. What had happened to change your prediction?

A. Well, I don't remember exactly whether we changed course, or whether the contact changed course, but there was a course change.

Q. The essential ingredient to having a C.P.A. collision had altered, either one vessel had changed, or the other vessel; both vessels had changed?

A. That's right.

Q. When you sent out these reports, the first one being of a collision with the CAPRICORNUS, and the second one being a correction that the contact was going to pass ahead of the CAPRICORNUS, did you broadcast it generally over the C.I. net?

A. Yes.

Q. Did you request acknowledgment from the vessels in the group?

A. No, I did not.

Q. Did you get acknowledgment from the vessels in the group?

A. No.

* * * * *

(Tr., pp. 94 & 95)

Q. Now your first report then, did it contain a solution as to the future movements of the Raid Fox?

A. It was course, speed and C.P.A.

Q. What was that C.P.A. the first time, now the initial time?

A. Collision with the CAPRICORNUS.

Q. Was there ever a broadcast, to your knowledge, to the effect that the C.P.A. was collision with formation?

A. No.

Q. Was there ever a broadcast to your knowledge, that there was a solution collision with the RUCHAMKIN?

A. No.

Q. Now when you sent out this broadcast to the, containing a solution that you predicted that there would be a collision, or that these contacts showed a possible collision with the CAPRICORNUS, did you ask the CAPRICORNUS to acknowledge receipt of that message?

A. No, I didn't.

Q. Were you instructed to do that?

A. No.

Q. Did any of the officers, either in C.I.C., or on the bridge of the FREMONT, or on the Flag bridge, request you to get such an acknowledgment from the CAPRICORNUS?

A. No.

Q. Would it not have been a very simple thing to do?

A. Well, it would have been, but there were so many contact reports that I didn't want to tie up the net.

* * * * *

(Tr., 95 & 96)

Q. Do you have any recollection of such a range in your own mind?

A. Well, as he said, this contact had been with us quite a bit during the evening, and when we changed course one way, it would close and change course another way, it would open.

Q. Did you detect any change of course in the contact during this period?

A. No.

Q. All the changes of course then were on the part of your vessel, the FREMONT?

A. Yes.

* * * * *

(Tr., p. 102)

PAUL A. WELLS, C.I.C. USS RUCHAMKIN, a witness called by the Government * * *.

DIRECT EXAMINATION

(Tr., p. 104)

Q. What happened to your radar room when it was struck?

A. We lost all power and radar and radio circuits.

* * * * *

CROSS-EXAMINATION

(Tr., pp. 106, 107 & 108)

Q. Do you recall sending a message from your vessel to the FREMONT, the flagship, concerning a beach reconnaissance?

A. I believe part of it, it was sent from C.I.C.

Q. Now would you tell me what circuit that would have been sent from on your C.I.C.? I don't mean the frequency, but just the general name or designation of it.

A. I don't recall.

Q. Would it be called the C.I. net?

A. Possibly. I wouldn't say.

Q. Were the circuits, whatever its name, be the type of circuit that would connect the C.I.C. of your vessel with the C.I.C. of the other vessels in the formation?

A. Yes, sir.

Q. Now in addition to this net which connected the C.I.C.'s, was there another voice radio circuit manned and in operation this night that connected the bridge or the command of the various vessels?

A. Yes, sir; I believe so.

Q. Now in addition to those two voice radio nets was there a third net, which would be called something like screen common, or the screen circuit which connected the screening vessels?

A. Yes, as I recall.

Q. Do you remember whether or not you heard any messages over all of these circuits on this particular night?

A. No, I don't recall.

Q. Do you remember any failures in your equipment on any of those circuits on this particular night?

A. No, not that I recall.

Q. Do you think your circuits were operating properly?

A. Yes, sir, to the best of my knowledge.

Q. You had no information to the contrary?

A. No, sir.

* * * * *

(Tr., pp. 114 & 115)

Q. Now at two ten there is another message entered or there is the beginning of a message entered to the RUCHAMKIN from this same individual who we have had designated to us as Captain Day, and there is no message, there is no text in your logbook.

Now do you recall what that message was?

A. No, sir; as I recall, we were called by this ship, and they gave our call sign and before they gave the message, they gave us a wait out. In other words, they gave us, they meant stand by for the message, but they never sent it.

Q. So that at or about two ten you were being called by some other vessel but they told you to wait?

A. Yes, sir.

Q. And then they never recommenced that message to you?

A. No, sir.

* * * * *

(Tr., p. 118)

Q. It states the operation order. Do you recall seeing this operation order in C.I.C.?

A. Yes, sir.

Q. Now it says Comm position or formation, if any. By that would you have a diagram available to you in C.I.C. to show the formation?

A. Yes, sir.

Q. Would you know then where every ship was supposed to be stationed with respect to every other vessel?

A. Yes, sir.

Q. It says the O.T.C. Do you know the O.T.C. on this particular night?

A. I believe so.

Q. Do you know the station to which you were going to proceed?

A. Yes, sir.

* * * * *

(Tr., pp. 119 & 120)

BY MR. CRENSHAW:

Q. Mr. Wells, I show you a page in this C.I.C. contact and C.I.C. log, which apparently deals with the watch, the midwatch on the morning of the 14 November, RUCHAMKIN. Were those entries, or did you make those entries?

A. I don't recall, sir.

Q. You can't then identify the accuracy of any of those particular entries?

A. I believe the writing is in my handwriting.

Q. You believe it is in your handwriting?

A. Yes, sir.

Q. Is this the type of log that you would keep ordinarily in the watch of the C.I.C.?

A. Yes, sir.

Q. Now I notice there is an entry at, I believe, time zero one three seven, maneuvering as necessary to join formation, taking screen station number three, FREMONT guide one one nine degrees true, fifty-five hundred yards.

Now would you explain to me what that entry says in English, common laymen's English.

A. Well, maneuvering as necessary to take formation, I understand taking various courses, speeds, in order to put us on station. And this number three is

the number station according to formation. The FREMONT guide and this bearing one one nine, at fifty-five hundred yards would be their bearing and range from us when we were on station.

* * * * *

(Tr., pp. 122 & 123)

Q. Now do you recall whether or not the Commanding Officer, or the Officer of the Deck requested of your C.I.C. a series of ranges and bearings to the guide, the FREMONT?

A. Yes, sir; I believe there were. We were sending them up to the bridge.

Q. You say you were sending them up to the bridge?

A. Yes, sir.

Q. Do you have any recollection of about how frequently these were being sent?

A. No, sir; I couldn't say.

Q. Tell me, would you have to stop the sweep on your radarscope in order to range on the FREMONT, or get its proper bearing?

A. To get an accurate bearing range; yes.

Q. Well, if the Officer of the Deck would ask you for a series of ranges and bearings, would you in normal practice stop your sweep to give them to him?

A. Yes.

Q. When you stop the sweep on the set in C.I.C., would that stop the sweep on the set, remote set on the bridge?

A. Yes, sir.

Q. So that if you were on the bridge and looking at the remote set, there, you would not get the continu-

ous picture presented to you from the bridge that you would get if the antenna were allowed to rotate freely?

A. Yes, sir.

Q. And that would be perfectly obvious to the Officer of the Deck, or anyone there who happened to look at the radar?

A. Yes, sir.

* * * * *

(Tr., p. 129)

Q. So that your radar was operating and presumably detecting the contacts when they were there, was it not?

A. Yes, sir.

Q. But you simply made no record of it?

A. No, sir.

* * * * *

(Tr., p. 129)

ROBERT E. GORENC, C.I.C. USS RUCHAMKIN, a witness called by the Government * * *.

CROSS-EXAMINATION

(Tr., pp. 135, 136 & 137)

Q. Now, as a maneuvering board has a certain degree of mystery to it, Mr. Gorenc, some of us that are not so familiar with it, and would it be fair to characterize it as a device by which you can measure or estimate relative motion and by that means advise the bridge or the Commanding Officer a suggested method of getting from one position to another in relation to some central ship or guide, such as in this case is the FREMONT?

A. That would be an accurate statement.

Q. By use of this device is it possible to say with a fair degree of accuracy what course and speed you

should steer? In other words, to predict how your vessel will move with relation to the other vessels?

A. Yes, it is quite accurate.

Q. Now on a maneuvering board would you have a sketch or a drawing or a presentation of all of the ships in the formation, one ship, or just your ship, or how would you set it up?

A. Well, it would be unnecessary to have all the ships on the plot that you were working on this particular problem.

Q. You would have to have some point of reference, would you not, Mr. Gorenc?

A. Yes.

Q. Now would that point of reference be the FREMONT, or would it be yourself?

A. Well, if you're maneuvering around the FREMONT, and that was the point of reference for this problem—

Q. In other words, she would probably be at the middle then, would she not?

A. Yes.

Q. Now then, would your present position be shown on this board?

A. Yes, sir.

Q. And would your future position be shown on the board?

A. Yes, sir.

Q. Now as you proceeded from your present to your future position, would you take consecutive ranges and bearings to determine whether or not you were going there?

A. Yes, sir.

Q. Now what would you do, draw a line, say, from your present position to where you wanted to go and see if you followed along that line?

A. That is the usual practice.

Q. And did you do that on this particular night?

A. I believe I did.

Q. What would you do with a solution? Suppose you did work up and, say, figure in your own mind that if you steered, say, course two six o, or two six o at twenty-two knots, you would get where you wanted to get? What would you do with that information; to whom would you tell it?

A. It would be relayed to the bridge.

Q. Where the Officer of the Deck and the captain were; is that correct?

A. Yes.

Q. And do you remember doing that on this particular night?

A. Yes, I do.

* * * * *

(Tr., pp. 139, 140 & 141)

Q. I show you a copy of your testimony before the Coast Guard at page 255, the last paragraph, question number seven. There you were asked, what messages had you sent or received in, let us say, the hour before the collision.

Would you look at the answer you gave then and see whether or not that coincides with your recollection? Does it? Is that substantially correct?

A. I believe it is substantially correct.

Q. Would you read that answer.

A. Well, sir, I think the only messages that we were concerned with at that time, the hour before the

collision, were those concerning our joining the formation and proceeding to station. I cannot establish the times, but I think shortly, approximately two o'clock. We notified the formation, that is, the screen commander that we were ready to join the station and the answer we were given was wait. I believe we notified them once more, and were told to wait again, and then the next message we got from them was to expedite, assume station.

Q. Now, Mr. Gorenc, the beginning of that answer—I think the only messages that we were concerned with at that time, the hour before the collision, were those concerning our joining the formation and proceeding to station.

Now does that mean you didn't pay attention to any other messages that came over the air?

A. No, it is a matter of which is primary.

Q. How many radio circuits do you have, did you have to guard in there, one or more?

A. More than one.

Q. How many would you say; as many as three or five?

A. As I recall there were six nets were to be guarded, five, I believe, were guarded that night at C.I.C.

Q. How many men do you have to guard those nets?

A. Well, the total number watch standers was three.

Q. You had three men. Now who told you to guard those nets; under whose directions did you guard those nets?

A. Well, the Op orders provided for the nets.

Q. The Operation order?

Now would the people who wrote and, answer this only if you know, would the people who wrote that Operation order know that you only had three men there to man the radars, to listen to the radio and to do the plotting?

A. I couldn't say.

Q. Well, could you say, would you say that? Would you say that three is an ordinary number of men in the C.I.C. of an A.P.D.?

A. The figure would be something like that, near that.

Q. So that it would be expected that there would be about that many people there to guard all these various radio nets?

A. Yes, sir.

Q. There was nothing unusual about your C.I.C., was it, the RUCHAMKIN's?

A. No, sir.

* * * * *

(Tr., pp. 146 & 147)

Q. Do you recall any messages concerning the proximity to your formation of shipping or unidentified radar contacts?

A. Question that we made?

Q. Either that you had made to the O.T.C., or that he was sending out for your benefit?

A. I don't recall any specifically.

Q. Specifically do you recall a transmission to the effect that there was a Raid Fox and that the C.P.A. of Raid Fox was estimated to be collision with the formation, or collision with the CAPRICORNUS?

A. No.

Q. Mr. Gorenc, how long had you been on watch in the C.I.C. or elsewhere prior to midnight?

A. I believe my previous testimony said seven-thirty that evening.

Q. That's correct.

A. It must be.

Q. Had you been in the C.I.C. when Captain Jackson or the Officer of the Deck of the RUCHAMKIN had undergone a maneuver such as approaching or joining a formation before?

A. Yes, I had, sir.

Q. Is it a sort of an involved thing or is it perfectly simple to do?

A. It is—actually it is comparatively simple. It's habit-forming, like any other maneuver, I suppose.

* * * * *

(Tr., p. 153)

Q. If you don't know as you were coming along that line, parallel to and a little to the right of the formation and going up ahead of her, were you plotting a maneuvering board solution and keeping track of your position with respect to the FREMONT?

A. Yes, sir.

Q. Was the relative motion of the various vessels involved proceeding properly? Did it look like the solution was working out right?

A. Yes, it did, sir.

Q. Now did you notice any other contacts in this group?

A. No, sir.

* * * * *

(Tr., pp. 158, 159 & 160)

Q. Now, Mr. Gorenc, aside from the possibility then that there was one of these vessels directly in the way of the RUCHAMKIN's radar, is there any reason why you wouldn't have picked up the WASHINGTON coming down there?

A. Well, we were frequently on a small scale.

Q. Why were you on a small scale?

A. To get more accurate ranges and bearings on the guide while we were proceeding to station.

Q. Now at whose request did you do that?

A. Well, that was done either for the plotter in C.I.C. or at the request of the bridge.

Q. Now do you consider then that the main thing you had to do with that radar would be to get the captain up there to his new station in the screen?

A. I think I did.

Q. Now that would be then to the exclusion of an effective search?

A. No, sir.

Q. Well, it would hinder your search, would it not?

A. Yes, it would hinder.

Q. You felt that the station-keeping was really primary at that time?

A. At that time, yes, I believe so.

Q. Did you feel that there would be, that you could rely on the fact that some of these big ships would tell you if there was anything in trouble up ahead of you?

A. Well, that's accepted practice in C.I.C.'s.

* * * * *

Q. Thinking back at the time not knowing a thing, about this strange vessel, would there be a reaction that you would expect with the formation slowed down?

A. Well, my actual reaction at the time, as I recall, was the fact that they, we were going to proceed some place in formation and they wanted us to expedite. That was my first reaction. My only reaction.

Q. So you thought they slowed down to this to help you get up where you belonged?

A. If I thought anything, I believe I thought that.

* * * * *

(Tr., pp. 165 & 166)

THE COURT: Let him be released.

Now he was testifying from the logs of the C.I.C. of the RUCHAMKIN, was he not?

MR. CRENSHAW: He was.

THE COURT: That he kept himself, or was kept in that Center?

MR. MCGOVERN: Kept by the previous witness.

MR. CRENSHAW: There is one we corrected during the recess, if Your Honor please. The call sign and one of the earlier witnesses, I don't recall which one we had, referred to the O.T.C. having issued, sent orders to the RUCHAMKIN and by clarification of the call signs with the naval officers involved, we clarified it and those orders were issued by the Screen Commander and it was brought out. That is why we brought it out categorically by this last man, but upon, after close reading, it will appear that there is a conflict in the evidence of this man from the C.I.C. of the

RUCHAMKIN with one of the former ones, and the reason for it is because we misinterpreted the call signs in the C.I.C. log. The ships' names don't appear, but this Navy—

MR. MCGOVERN: They have a system, one or two after the letters, and the same letters were used and the witness who actually took this was examined on the letters as they were misinterpreted rather than as is properly—

MR. CRENSHAW: Erroneous interpretation.

* * * * *

(Tr., p. 181)

CHARLES N. DAY, Officer in Tactical Command (O.T.C.), a witness called by the Government * * *.

CROSS-EXAMINATION

(Tr., pp. 201 & 202)

Q. Now you spoke briefly of a reorientation. In the picture that we have, or the sketch that we have on this blackboard, the four screening vessels are out in front of the main body. Was it on this particular night contemplated that as you changed course from north to west that those ships would go through some process and take station ahead of the vessel on the new course?

A. Yes, sir.

Q. So that basically those vessels would always stay out ahead of you, arranged or patterned or oriented on your base course?

A. That's right, sir.

Q. And that arrangement has been discussed in preliminary conferences, had it?

A. Yes, sir. We had had commanding officers' conferences at which the screen commander was in

attendance. He had his preliminary conferences. The screen commander also had his separate operation orders.

Q. Now, Captain, when you were going to make a turn with this formation, you have to think in terms of getting that screen out ahead of you, or giving them enough time to get there, do you not?

A. Yes, sir.

Q. Now this particular night, the screen commander was active in keeping his screen position ahead of you, and did you have to delay your orders or because of the slowness of the screen, or were they prompt in carrying out their orders?

A. I think everything was normal, sir.

Q. Everything was normal.

* * * * *

(Tr., pp. 206 & 207)

Q. All right, sir. Then you changed course at about ten minutes of two from two seven o to two five seven?

A. Navigational course to Camp Pendleton.

Q. That course of two five seven was designed to take you to where?

A. Camp Pendleton, sir, where the assault area landing—

Q. Is there a Point Yoke that was mentioned in your Operation order?

A. Yes, sir; I believe there was.

Q. Now was that a point off Camp, the beach at Camp Pendleton to which you were actually headed?

A. I believe it was. I can't—

Q. So you set your course at zero one fifty, you set your course of two five seven to head for that position? Was that your intention?

A. Yes, sir.

* * * * *

(Tr., pp. 214, 215, 216, 217 & 218)

Q. By the way, Captain Day, have you served with your particular staff for some length of time?

A. I had served with them during the planning period; no operational period, sir.

Q. Were you pretty well familiar with their experience and abilities?

A. I would say that I was. I had fairly well sized up all of my staff officers.

Q. Do you remember Ensign Gilliland?

A. Very well, sir.

Q. And what job did he have this particular night?

A. He was a junior watch officer. He was more or less—he had not taken over the duties as a regular watch officer. He was under training, in other words.

Q. Then he was not very much experienced then, was he?

A. Well, I wouldn't say that, sir. He was an outstanding officer. He did have considerable experience and much aptitude and I had extreme reliance in him.

Q. Now were you asked questions at the Naval Court of Inquiry regarding the experience of your staff?

A. Yes, I believe I was.

Q. Were you asked, do you remember, a question, number ninety-one; Who was your staff watch

officer from the zero zero zero to zero four hundred watch? Answer: Lieutenant Nelson.

The next question was, What is his experience? Answer: I imagine the same. As I say, I am not fully acquainted with the official or personal qualifications of the officers, most certainly from the time that I have had the division. I have not become fully acquainted with the characteristics of my staff.

Now would that statement be right or—

A. I think I could give it, sir. I'd been with them during the planning period and had pretty well become acquainted with all of my staff officers. Operationally this was practically our first operation together and I would have some difficulty in, at that time, of evaluating them to the satisfaction of being able to answer the Court of Inquiry.

Q. Now what sort of experience had you personally had, Captain Day, in running this sort of a maneuver? Had you done this before?

A. Not with the amphibious type of exercise which was embodied in Seascape. From June until September I had been in operational control of a task group, of a considerable number of ships which operated out of Norfolk and into the North Atlantic waters, Newfoundland, Labrador, Greenland and back over a period of three months. Previous to that, during the war I was the commanding officer of a flagship which had tactical command of thirty-seven ships on operation out of Guam, sir.

Q. With this background of experience in group operations then, would you say that it was a dangerous thing to have a strange vessel within one of your formations?

A. Yes, sir; it was very dangerous, sir, and it was apparent from the time that the ship started its approach into the screen, that it was a very dangerous situation. It is recognized universally as a very dangerous situation.

Q. And you recognized on this particular night as a dangerous situation.

A. Yes, sir.

Q. Would you consider that the screen was a part of your formation?

A. Yes, sir; it was a part of my formation.

Q. Now do you know very much about these screening ships, the personnel aboard them; have you been an A.P.D. or something like that or destroyer—

A. I have visited them. I have never served on board an A.P.D. or a destroyer, but I visited them and I have a pretty good understanding of that make-up, their operations and personnel.

Q. Now, you have on your ship, you say, the flag has the communications department of the flagship. You would have the signalman then under your control, would you not?

A. Yes, sir.

Q. Did they stand their watch on a level, same level that you were on, or one above that?

A. They were on the tactical bridge with me, sir.

Q. Same level with you?

A. Yes, sir.

Q. Now do you know what the signalman's duties are with respect to observing the other vessels in your formation?

A. They assisted as lookouts as well as being their basic job and carrying out their basic job of signalman.

Q. One of the signalmen has characterized himself as being a sort of high-powered lookout. Would you think that was a fair characterization of them?

A. No, sir. I think he would be a lookout assigned to carry out his normal naval lookout duties in addition to his signalman duties.

Q. And equipped with a long glass?

A. Yes, sir, or with the eight fifty binoculars.

Q. Now these lookouts, these signalmen, if you told them to signal, say, the LLOYD, would you have to say, Now signal the LLOYD. The LLOYD is over there, or would you just tell them to signal the LLOYD?

A. Signalmen normally know the location of all the ships in the formation.

Q. Signalmen pretty well pride themselves on being able to tell you where the ships are, don't they?

A. That's right, sir.

* * * * *

(Tr., pp. 234 & 235)

Q. Captain Day, you testified before the Navy Court of Inquiry very shortly after this collision, did you not?

A. Yes, sir.

Q. Now I would like to show you this Question Fifty on page 9, pertaining to the communications circuits and I would appreciate your reading that to the Court.

A. What question was it; three fifty?

Q. Number fifty; yes, sir.

A. "Did you receive any reports as to the reliability of your communications circuits on the night of 13-14 November?"

"Personally, no. There was one period I believe, zero two hundred when I wanted to reduce speed, to reduce speed from fourteen to eight knots. It took quite a bit of time to get some of these ships to answer up."

Q. Now you have testified that that message didn't actually go out then until five minutes after that; is that correct?

A. I just testified to that; yes, sir.

Q. You testified at the Navy Court of Inquiry that you had tried to send it out at two o'clock. Was that testimony correct?

A. I am not sure of that, sir. I do not recollect it, sir. I know earlier in the evening I had slowed to eight. It was about twenty-three ten. And we had had some difficulty with one of the circuits and we finally had gotten the message through.

Q. Now your estimate of the time at which you sent this business, this message out at this time was very fresh, was it not?

A. I would think so, sir.

Q. You have no reason to doubt your estimate before the Court of Inquiry, have you?

A. Well, my recollection now is not quite like that, sir.

Q. Have you given a great deal of thought and time in going over this situation, Captain Day?

A. Yes, sir.

Q. Do you think you have the whole situation in pretty clear perspective now?

A. Yes, sir; I do.

Q. Did you have it in perspective at the time you testified before the Court of Inquiry?

A. I think I did, sir.

* * * * *

(Tr., pp. 239, 240 & 241)

Q. But it was the presence of the stranger in your midst that stopped you from turning left?

A. Yes, sir. And the ships that were off my starboard bow, of course.

Q. And ships off your starboard bow kept you from turning left?

A. Oh, excuse me. I didn't get the left business. Well, to have turned left—

* * * * *

Q. Now, Captain, you and your C.I.C. and other vessels in this formation had had that tanker under observation for a long time. Had she done anything but plow right along in a northerly direction?

A. She had not been reported to me as such, sir, as a ship that was of danger to the formation before I picked her up visually, sir.

Q. After you picked her up visually, did she do anything but plow along under normally northerly course?

A. According to our radar track and my visual inspection of her track, of her course, it appeared that she was heading on a track that would head through the center of my screen and clear the CAPRICORNUS.

Q. And she didn't give you any indication that she was going to do anything else but exactly that, did she?

A. Yes, sir; that is all I had to work on.

Q. That is all you had to work on.

Now, Captain Day, when she got into this point here, she was coming down there, this particular movement line?

A. Yes, sir.

Q. Had you turned left at this particular time, these ships here would have moved in this direction, would they not?

A. Yes, sir.

Q. This ship here would already be past her and would move like this. Wherein lies the danger in a left turn there, Captain Day?

A. Well I just don't like it. It was not my judgment at the time that a turn would be safe, sir. Most certainly a change in speed would be safe under most conditions. The CAPRICORNUS, it may have taken a belated turn into the track of the WASHINGTON. Anything might have happened, sir, in the maneuver to the left.

Q. If you had have ordered all ships to turn left, you would have expected the CAPRICORNUS to turn left too?

A. Yes, sir.

Q. And you would insure that she turn left?

A. Yes, sir.

Q. And that would remove any possibility of her turning right into the tanker, would it not? These ships follow your orders, don't they?

A. That's right, sir.

Q. And you can expect them to follow it. You know they're going to do it; isn't that right, sir?

A. Normally, sir, yes, sir. There have been cases where they get the word late and trouble ensues.

Q. I suppose there are some cases where they don't get the word at all; is that right?

A. That might be the case, sir.

* * * * *

(Tr., p. 243)

Q. Now did you know, Captain, that when you had taken this group out, this fifty miles, or however many miles you were off the Virginia Capes, that you would be encountering a great deal of merchant shipping?

A. It had, the area there has a reputation for a lot of shipping, sir.

Q. It is more or less the normal shipping lanes out there, is it not?

A. Yes, sir; particularly a number of ships out of Norfolk.

* * * * *

(Tr., p. 249)

Q. Now after the collision, did you have occasion to warn away or have a merchant vessel warned away from the scene of the collision?

A. After the collision, sir?

Q. After the collision.

A. As I remember we had several contacts when we were approaching in toward Camp Pendleton, one of them in which we had a—we were the privileged vessels, and we continued and the ship turned away and another time, when we were the burdened ships and we slowed and let the ship cross ahead, sir. That was e[illegible]oute to Camp Pendleton.

Q. What I was asking, sir, is, do you recall after the collision whether or not a merchantman was warned away from the scene of the collision by your vessel, or by some other vessel in your formation?

A. As I recollect it, shortly after we had rejoined our, reformed our formation minus the FREMONT, to go back, we had a contact on the port bow, and this ship persisted in coming in, and as I remember it, we sent out a blinker signal to this ship and just as we sent the blinker signal, why the ship turned away.

* * * * *

(Tr., pp. 250 & 251)

Q. Captain Day, your formation was a little bit late leaving the Hampton Roads area, was it not?

A. Yes, sir; we had been delayed by the larger than normal landing force. We had a reinforced regiment, all combat team and the timing had been a little bit off and they were a little bit slow and we were delayed about two and a half hours.

Q. Did you not also state that you had had to slow down during the middle of the night to try to let that group to the south draw past you?

A. Yes, sir; we did.

Q. Would it be fair to say you were a little bit behind your timetable about two o'clock?

A. Yes, sir, but we still intended turning at twenty-four hundred.

Q. Now I know that you had issued a change of speed at ten minutes past two, resumption to fourteen knots from five?

A. Yes, sir.

Q. Now what was your purpose then in ordering that speed change?

A. It was to better my time back to the assault area.

Q. You were anxious to get on with the maneuver?

A. That's right, sir.

* * * * *

(Tr., pp. 255, 256 & 257)

Q. Would you say a twenty degree course change was a radical course change, Captain?

A. Not in avoiding action.

Q. In this particular situation, if the commanding officer of the USS HOLLIS, or the screen commander over here on the HOLLIS, had have reported to you that this contact had changed course radically to the right and was coming down through the formation, would that mean in your mind a twenty degree course change, or a change of greater magnitude than that?

A. It might be that, sir. My track, you see, of the WASHINGTON preceding crossing into the screen, showed the WASHINGTON crossing through the two center ships of the screen and ahead of the main body. I was reckoning with that report from C.I.C. all the time.

Q. That course change, such as the one I have described, a radical change to right, would that make it, the relative movement line bend or would it stay in the same line, if we assume that you stayed on your same course and speed?

A. It would most certainly have a direct relationship, sir.

Q. Now once again, I refer to what has been filed with the Government's Interrogatories as Exhibit 22 before the Coast Guard; does this dotted line which is extended beyond the time zero two zero two, is that intended to show relative movement line of the SS WASHINGTON as she came through your formation?

A. The track of the WASHINGTON relative to the track of the formation; yes, sir.

Q. Inspecting that relative movement line, would you say then that it indicates a radical change of course to the right of the oncoming merchantman at any one of the following times; at zero one fifty-five?

A. No, sir.

Q. At say, half way between one fifty-five and two o two?

A. No, sir.

Q. At two o two.

A. There's a slight indication there, sir.

Q. There is an indication after two o two, is it not?

A. Yes, sir.

Q. Now you gave a speed reduction after two o two?

A. Two o five I think it was, sir.

Q. Now that would have a tendency to make that line draw away from your formation a little bit?

A. That's right.

Q. That is about what it did there, didn't it?

A. Yes, sir. I did not make this relative movement diagram. My chief staff officer did, and I think he should be questioned on the mechanics of the interpolations and whatnot.

Q. I appreciate that, sir, and I don't mean to put you beyond what you can answer. If you find trouble, just tell me that, but I would like to know if this movement line indicates to you at any time that the vessel which was being plotted had changed her course to the right radically?

A. No, sir. In fact, the reports from C.I.C. did not indicate that, and I think this relative movement

diagram has as its source the C.I.C. plot, and the relative speeds of the WASHINGTON and the formation as best known.

* * * * *

(Tr., p. 272)

HENRY STANFORD PERSONS, Screen Commander (Com Screen), a witness called by the Government * * *

CROSS-EXAMINATION

(Tr., pp. 282 thru 288)

Q. Would there be anything classified about those precautionary statements?

A. No.

Q. Do you know of your own knowledge of any reason that those statements could not be and should not be produced before this Court?

A. I know of no knowledge about those statements. The Operation Order as a document is a different thing.

Q. Do you know why those statements could not be declassified by the Department of the Navy and produced to this Court?

A. I do not.

Q. Now, Admiral Persons, in this Operation you say that you made precautionary statements concerning the rules of the road. Could you give us a summary of some of those statements that you put in your Operation Order, or could you refer to this Op Order and read them to the Court?

A. I see no reason why I could not, but I believe that they were in my testimony before the Naval Court of Inquiry. They are very short, only about two or three sentences.

Q. Could we have those read into the testimony? Do you recall where it appeared?

A. If I could see my testimony before the Naval Court of Inquiry, I could tell very quickly. My memory could be at fault on that.

I am wrong. It was deleted.

Q. It was deleted?

A. Yes.

Q. But you know of your own knowledge of no reason why that should have been deleted?

A. I think that I know of my own knowledge—no, I know of no reason. Of course, I don't know the full aspect of the question.

Q. Now, Admiral Persons, did you have before you left on this Operation an opportunity to meet with your Commanding Officer and discuss the Commanding Officers of the vessels which you were to command and discuss the plan, the maneuver, and go over any part of the details of his execution?

A. I did.

Q. Now when, if you recall, were such conferences or such a conference held with respect to the Operation?

A. I don't recall the exact time, but I would say it was within a week prior to the Operation.

Q. The Commanding Officers of what vessels were present at that conference?

A. To the best of my knowledge Commanding Officers of all the screening vessels were present.

Q. Would you please name them?

A. Captain Jackson of the RUCHAMKIN.

Q. The vessel is the main—

A. RUCHAMKIN, LLOYD, HOLLIS, O'HARE, CORRY.

Q. Now at this conference did you discuss the intentions of the Officer in Tactical Command and how the screen was to behave as he made his intentions felt by tactical orders?

A. To this extent, I informed them that I had requested the O.T.C. to give me a preliminary period of some ten minutes prior to executing a large change of course so that I might commence the reorientation of the screen.

Q. Now these ships that you have mentioned were assigned to your command for this Operation, were they not?

A. For a certain period of the Operation they shifted from task unit to task unit.

Q. Now did you discuss the fact that the RUCHAMKIN would not leave as part of your screening group and would proceed on an independent mission?

A. I discussed it with Captain Jackson of the RUCHAMKIN. I do not recall specifically that I discussed it with the others at the time but Jackson and I did discuss it.

Q. What particulars of that did you discuss with Captain Jackson?

A. We mainly—rather, he informed me that his intentions were to join from astern, keeping clear of the main body, and that being the sensible and proper way to make the approach, I heartily concurred.

Q. Did you mention a course on which the main body would be steaming, or would probably be steaming at the time that Captain Jackson would make his approach?

A. No, I did not. It was too elastic.

Q. It wasn't discussed then to your recollection that he would make his approach when you were on

course two seven o, or some westerly course similar to that?

A. No, because, for example, he probably expected to join before midnight.

Q. The Operation Order contemplated his joining before midnight or about midnight, did it not?

A. To the best of my belief; yes, sir.

Q. And the group as a whole was held up somewhat upon the sortie from Norfolk?

A. Yes.

Q. And the entire Operation was a little bit behind schedule, was it not?

A. No, I don't think you could say the Operation was behind schedule. Certain phases were behind schedule, but the Operation culminated in the assault landing, if that was made on time, the Operation was not behind schedule.

Q. Then it didn't matter to you whether Captain Jackson took his assigned position in a five-ship screen anytime prior to a zero four twenty-nine, for instance, which would be one minute before that?

A. I wouldn't remember about the zero four twenty-nine. If he took his position in the cruising screen at time sufficient for other operations to take place, you must remember that I also had to detach O'HARE and CORRY, the two gunfire support ships from the screen prior to reaching the objective area, so they could proceed independently.

Q. Admiral Persons, you will have to bear with me a little bit as I did not know that. You say that is part of the Operation Order which we the uninitiated had not been trained—can you explain to me what the general purpose of maneuvering such as this is it strictly a training maneuver?

A. Yes.

Q. It equips your officers then in all phases of their activities necessary to bring such a maneuver to a successful culmination; is that correct?

A. That, but also we were training Army troops.

Q. And training Army troops.

Now in such an operation like this, I understand, you were sailing with a circular formation of five ships deployed or about a center, or six ships and on a one thousand yard circle, and then ahead of them was what has been termed a bent line screen, and you were the screen commander. Now could you tell us what the general purpose of sailing in such a screen formation is, if you know?

A. The screen of four ships were an antisubmarine screen to provide protection against submarines.

Q. That is the only sort of protection that they would provide?

A. In that formation, yes.

Q. Are you fairly familiar with the screen formations and maneuvers involving screening ships?

A. I believe I am. At the time I had just completed a refresher course of two weeks at the Fleet Sonar School at Key West.

Q. And that is the basis of your experience in screen operations, sir, that two weeks course?

A. That two weeks course plus some operations with my own ships during October in training exercises.

Q. Have you, Admiral Persons, ever been a screen commander prior to this particular night?

A. I had not been a screen commander. I had operated with screens.

Q. Now have you had command or been stationed aboard screening vessels in A.P.D.'s, L.D.I., or destroyers before?

A. Not before that time.

Q. Before this Operation?

A. But as Operations Officer of First, of the Seventh Fleet in Chinese waters, and later as Operations Officer of the Naval Task Group for the atomic tests in 1948 I had operated screens from flagship.

* * * * *

(Tr., pp. 296, 297 & 298)

Q. Now I will read a short excerpt from your testimony before the Court of Inquiry on this particular point.

> Then O.T.C. began to reorient his formation axis to get it on the—I should have said the formation axis was nine o formed up, then he began rotating his formation axis in sixty degree increments, I assumed to be ready for the landing next morning.
>
> Is that correct?

A. To the best of my knowledge, yes.

Q. At something approximately zero zero forty when the main body was in formation axis two ten true, the signal was given to reorient—pardon me—it is signal was given to change course; formation to north zero zero true. I then directed the screen to change screen axis to zero zero true. After the signal was executed, the next signal that was given was to change formation course to two seven o true. I gave signal to reorient screen axis to that same bearing, two seven o true, shortly before zero one four five. The formation then was on course two seven o. The screen

axis was two seven o true. The axis of the main body formation was two ten true and speed fourteen knots. At some time between zero one forty or thereabouts, RUCHAMKIN reported for duty. At that time she was bearing zero eight four degrees true from HOLLIS in station one, nine thousand yards.

Is that correct, sir?

A. I assume so. I know that there was at some time about then.

Q. Your recollection at the time you gave this testimony was much better than it is today?

A. I believe so.

Q. Continuing.

I told RUCHAMKIN to close formation and be prepared to take her station in the screen when so directed. I also told RUCHAMKIN to expedite closing. I informed O.T.C. that RUCHAMKIN was proceeding to close the screen and that I would tell her to take station and that I would order a five-ship screen and place RUCHAMKIN in station when she had closed. He asked me for the bearing of RUCHAMKIN from him, and I gave it, I believe, as approximately zero six five true from him. The exact range I cannot recall. But it was something like that. Sixty-five hundred yards from the guide FREMONT, my estimate.

Now that is a correct statement of the sequence as near as you can recall, is it not?

A. As near as I can recall; yes.

* * * * *

(Tr., p. 329)

Q. Now one of these messages that you relied upon as a warning to the RUCHAMKIN was your announcement to the O.T.C. that this contact had changed course radically to the right?

A. That's correct.

Q. Yet the O.T.C. testified that he never heard that message and you have said that you can't explain why he didn't hear it. Is that correct?

A. That is correct.

Q. Are you familiar with or were you then familiar with what was going on in the C.I.C. of the HOLLIS concerning radio transmissions?

A. In general.

* * * * *

(Tr., p. 341)

CHARLES T. RYAN, Signalman, USS RUCHAMKIN, a witness called by the Government * * *.

(Tr., pp. 344 & 345)

CROSS-EXAMINATION

Q. Mr. Ryan, do you recall what color lights you used in sending this message?

A. Amber lights.

Q. Is that an amber light filter over a white light?

A. That is an amber filter over a white light.

Q. That you used with a reducer which reduces it from twelve inches to six inches, something like that?

A. Yes, sir.

Q. About how far is that light ordinarily good for?

A. I don't have any idea now.

Q. But it reached the FREMONT all right?

A. Yes, sir; it did.

Q. Did you reach the HOLLIS with it?

A. No, sir.

Q. Do you know how much farther away the HOLLIS was than the FREMONT?

A. No, sir; I don't.

Q. Do you think the reason, or do you know what the reason was that you didn't reach the HOLLIS?

A. No, sir; I don't.

Q. Do you think your light was strong enough?

A. Should have been; yes, sir.

Q. As a signalman you also have lookout duties, do you not?

A. Yes, sir.

Q. Were you performing those duties, were you keeping an alert look there this particlar night?

A. At the time that I was sending out the message, I was sending the message, I wasn't acting as a lookout.

Q. From the time of the completion of the message until the collision were you looking out, were you performing your duties as a lookout, after you finished the message, from that time up until the collision; did you look out?

A. At what time, sir?

Q. Say, what time was the message, one forty-six?

A. One fifty-six.

Q. One fifty-five, from that time until two ten, or two fifteen, did you look out?

A. No, sir; from one fifty-five until two ten I was attempting to raise the HOLLIS.

Q. You were signaling to the HOLLIS all that time?

A. Right.

Q. Now you stopped signaling the HOLLIS about ten minutes after two?

A. Yes, sir.

* * * * *

(Tr., pp. 346, 347 & 348)

Q. As you were trying, signaling to the HOLLIS, were you in a starboard wing or port wing of the bridge?

A. Port wing.

Q. The same side the formation was on?

A. Yes, sir.

Q. Did you chance to look out and look at the formation as you came up?

A. Several times.

Q. Did you see them there all right?

A. Yes, sir.

Q. Did you see, did you see more just, overtaking lights—do you know what overtaking light is?

A. I don't understand you, sir.

Q. What sort of an appearance did the formation give to you?

A. Just several lights.

Q. Did you have any trouble picking out individual ships?

A. No, sir.

Q. Did you see anything beyond the formation?

A. Not that I recall, sir. No, sir.

Q. Did you look?

A. No, sir.

Q. Did you hear anything on the RUCHAMKIN on the bridge, on the bridge of the RUCHAMKIN that would have made you try to look up ahead?

A. No, sir.

Q. Past the formation?

A. No, sir.

Q. Could you hear the radio signals as they came in, the voice radio signals, the speakers?

A. Yes, I believe I could have.

Q. Did you hear anything about a stranger being in the midst?

A. Not that I recall, sir.

Q. Was the first time you had any idea that the WASHINGTON was anywhere around when you saw her, just as you said, the same time the captain saw her?

A. That's the first time.

Q. Was that the first time you had any idea what she looked like to you when you saw her?

A. Saw the bow off the RUCHAMKIN and the green running lights.

Q. How far away was she from you?

A. I don't recall now.

Q. Did you see the white lights?

A. Masthead lights.

Q. Masthead and running lights?

A. Yes, sir.

Q. And that was at the time that the captain said that looks like it's closing us, or words to that effect?

A. Words to that effect; yes, sir.

Q. You had not seen her prior to that time?

A. No, sir.

* * * * *

COLLOQUY WITH COURT

(Tr., pp. 355, 356 & 357)

MR. MCGOVERN: We have two orders before you; one is our order for production, now we have received the medical on the man, Upton, but we haven't received the other files on the two witnesses Riche and Cain, which we were entitled to under what I understood the Court's direction was and we have in turn without waiting for an order, because Mr. Crenshaw needs the material right away, we have provided him with the declassified testimony that we were ordered to give, without having a formal order. Now I submitted a formal order in both cases and I do think before we go into his witnesses who will come around sometime on Monday, that I ought to have the order entered or at least the material furnished and that certainly in order to correct my situation, my having accounted—

THE COURT: Every order that you have tendered has been entered with the exception of one you left today.

MR. MCGOVERN: Oh, I see.

THE COURT: I do not see any occasion for the one you left today, why it is necessary, because it shows on the record already.

MR. MCGOVERN: Well, that is the one which recites that we have been ordered to produce and we have produced.

THE COURT: I say it shows on the record already. I think it does. It has been so long ago I have forgotten it, but the rules that were made are of record.

MR. MCGOVERN: Your Honor, I have no difficulty in arguing the ruling and I certainly don't want

to, intend to say that want to get them in an order. It's just we have complied with the direction which was on the record. Mr. Crenshaw has certified that we had complied.

MR. CRENSHAW: Yes, I have no problem with what Mr. McGovern's position is on it today. That is, his witnesses started, and he handed us the Coast Guard testimony of those witnesses. Now on the day that our witnesses start, we will hand him the same, the records and whatever it is of our witnesses, the physical or whatever they are that we were required to produce. That is what I had in my mind that—

THE COURT: Does that include the two that he specifically mentioned?

MR. CRENSHAW: Yes, sir.

MR. MCGOVERN: Yes.

MR. CRENSHAW: It is all right here in some briefcase out [redacted] hotel, so far as that is concerned.

THE COURT: But it will be available when you introduce the witness?

MR. CRENSHAW: Yes, sir.

THE COURT: And you say—

MR. MCGOVERN: I don't think that is discovery. Discovery is supposed to know before the witness.

THE COURT: Is not that the same course that you followed?

MR. MCGOVERN: No, Your Honor; we provided testimony of witnesses beginning last, oh, in the middle of last week, and we produced the testimony just as fast as it was available without waiting for the witness to do any stand-taking.

THE COURT: Why not give it to Mr. McGovern Monday?

MR. CRENSHAW: If he wants to come out to the motel, I will give it to him tonight. I will bring it in Monday.

* * * * *

(Tr., pp. 376 thru 380)

THE COURT: Now, Mr. Crenshaw, what you are working up to, when and if it becomes pertinent, is an opportunity to see the Tactical Maneuvering Doctrine as written?

MR. CRENSHAW: Yes, sir.

THE COURT: From which this extract has been taken?

MR. CRENSHAW: Yes, sir.

THE COURT: Mr. McGovern has explained that it is beyond his control, and I thoroughly accept that statement. But it seems to me that it ought to be made of record that that is the fact. In other words, the Court fully accepts what Mr. McGovern said, but for his own protection, so that his misunderstanding might not be undermined later and found to be faulty, it would seem to me that if this is privileged, that then there should be a formal claim filed of the privilege. Otherwise the only thing we have in the record which is entirely acceptable to us, but is not acceptable to the record, is the statement of Government counsel that it is such.

MR. MCGOVERN: Yes, sir.

MR. CRENSHAW: If Your Honor please, in the Reynolds case they went so far as to state the—the Supreme Court said that the chief officers of the Department which would be the Secretary of the Navy—

THE COURT: Would claim the privilege?

MR. CRENSHAW: Would claim the privilege after a personal review of the situation.

THE COURT: I think it would have to follow the rule as to claiming the privilege just as you suggest. And it seems to me that that ought to be done in this case, if it be the fact, that the papers are withheld on the basis of privilege.

MR. MCGOVERN: I think we had better put Commander Blocher on for that.

COMMANDER BLOCHER: I am not qualified.

THE COURT: You can take Commander Blocher's statement without any oath, if you want to make a statement about it.

COMMANDER BLOCHER: Sir, it is my understanding—my understanding is based upon what I am told by Security classification officers, that these publications which we have been trying to get ahold of and trying to have declassified, are publications used by the NATO countries, that to obtain the declassification of the publications or part of them would require the consensus of a concurrence of the other NATO countries involved.

THE COURT: Well, I am sure that it is your understanding of it and I am certain that is Mr. McGovern's understanding of it, or you would not be stating it here. But that comes down to the fact that the Government is claiming a privilege.

COMMANDER BLOCHER: Yes, sir; I understand.

THE COURT: Because it cannot declassify them.

COMMANDER BLOCHER: That is right.

THE COURT: And you think they are privileged. Now that claim ought to be made in the manner and method set forth in the Reynolds case.

COMMANDER BLOCHER: Your Honor, my understanding—trying to get it clear in my own mind—my understanding of the Reynolds case was to individual testimony of people, where there had been no previous discovery or previous testimony.

THE COURT: That is certainly true.

COMMANDER BLOCHER: Here it is not the testimoney of people but simply the books themselves.

THE COURT: That is true.

COMMANDER BLOCHER: And that is what you want the Secretary of the Navy, so I understand correctly.

THE COURT: If this book cannot be declassified and you have been given to understand it cannot be then—

COMMANDER BLOCHER: That is correct.

THE COURT: Then that claim should be officially made of record.

COMMANDER BLOCHER: Right.

THE COURT: So that counsel on the other side can then make an issue of it, if he sees fit.

MR. CRENSHAW: That's right. The reason that we pushed this so vigorously, sir, was the same situation was presented to us when this case started with respect to the screen. It was argued before Your Honor in Newport News in 1954, which is a long time ago, that the position of the screen was classified and could not be told us because of the same NATO tie-up, but when we got the logbooks of all the screen vessels, the coordinates were right in the logbooks and so we wondered whether or not the same thing would happen with this.

MR. MCGOVERN: Your Honor, I think —

THE COURT: Let's do this.

MR. CRENSHAW: That is why I asked for the formal claim.

MR. MCGOVERN: It is the source. It is not the fact. It is the source that was classified.

THE COURT: Let us put this letter in evidence then with the next exhibit number, and then the Government will, as I understand, move from here to formally claim the privilege, if it be so advised.

MR. CRENSHAW: Have the name of the book from which that is taken?

THE COURT: Yes, that is Tactical Maneuvering Doctrine.

MR. MCGOVERN: Thank you.

THE CLERK: That is Government's Exhibit No. 15.

(The Clerk so marked the letter as Government's Exhibit No. 15 in evidence)

* * * * *

(Tr., p. 383)

ARTHUR C. JACKSON, Captain, USS RUCHAMKIN, a witness called by the Government * * *.

DIRECT EXAMINATION

(Tr., p. 399)

I gave the order to the Officer of the Deck, to the helm and everybody else within hearing range of my voice to take a full right rudder and—well, let me digress a little bit.

* * * * *

(Tr., pp. 417, 418 & 419)

CROSS-EXAMINATION

Q. Now this sailing, this Operation Plan, I understand occupied the span of several days, did it not?

A. Will you be specific and say either Seascape, or the Screen Op Order and so on, so that I will know specifically what you're talking about, so that I won't become confused between first one and then the other?

Q. I have in my hand a copy of Operation Order Number 1052 entitled Seascape which was handed me this morning.

A. Who put it out?

Q. This has on the front of it Commander Amphibious Training Command, United States Atlantic Fleet and Commander Task Force 86. Then inside of it sets out Task Organization.

A. We were—well, of course, the one that you hold is different from the one I remember, but this Operation involved four or five days of work, maybe more than that. I don't remember exactly now.

Q. This particular plan, in scanning it rather quickly, shows under the Task Organization of Task Force 86, a subdesignation, or a subgrouping 86.2 Attack Force, Captain C. N. Day, U.S.N. Then on page A-1, which follows page 6, under Annexed A, there is a listing of the detailed Task Organization, which sets off the top, Task Force 86 Seascape Training Force, Rear Admiral A. J. Wellings, United States Navy, and then it has several groups at A, B, C, D, E, F, and then at G, it has 86.2 Attack Force, Captain C. N. Day, U.S.N., ComTransDiv 22. Then brackets 10 to 14 November. Then under it that is listed Landing Force, and vessels are listed, FREMONT, NEW

KENT, GLYNN, CAPRICORNUS, HOLLIS, LLOYD, RUCHAMKIN, CARTER HALL, SAN MARCOS, and then four LST's and six L.C.U.s, the numbers of which are given here, but I don't believe are material.

Now does that coincide with your recollection—excuse me—it has then following on the next page, it has some LSMRs, four of them, the crews are NEWPORT NEWS, the O'HARE, the CORRY, and the NEWPORT NEWS, O'HARE and CORRY are entitled Detachments of Naval Beach Group 2. Now does that seem familiar to you, sir, as your general organization, and would you feel free to look at that?

A. As far as I know that is correct.

Q. Do you recall having seen a copy of this particular Operation Order before you sailed from the Hampton Roads area on the afternoon of the 13th?

A. Well, I have seen one very similar to that. However, it would have—the cover on the one that I saw was green instead of white. I don't know that that makes any difference or not. It apparently is the same information on the inside.

Q. Would this indicate to you then, this Annex A that I have just read to you, would indicate to you that Captain Day was the Commanding Officer of a group known as the Attack Force?

A. According to that Operation Order; yes, sir.

Q. In that Attack Force were listed the vessels whose names I have read off, or whose designations I have read such as four LST's or six L.C.U.'s, and so forth.

A. That you are reading there is an over-all organization for a period of 10 November to 14 No-

vember, but does not necessarily cover the actions of each vessel within that period. He could be ordered on detached duty to go in to Little Creek and pick up supplies, or what have you, or on detached duty, such as the RUCHAMKIN was sent on and still be a part of an over-all organization, sir.

* * * * *

(Tr., pp. 420 thru 423)

Q. Captain Jackson, prior to your sortie or sailing from Little Creek area toward Camp Pendleton, had you conferred with your superior officers, either Captain Persons or Captain Day, as to the details of carrying out the maneuver, or exercise that these various vessels were going to do?

A. I had conferred with Captain Persons personally, and I had conferred with members of Captain Day's staff. Does that answer your question, sir?

Q. Yes, and do you recall when, within a few days of your sailing, did you confer with Captain Persons?

A. I testified at the Navy Court of Inquiry that I wasn't sure but I thought that it was on the previous Friday and that is still the best of my recollection.

Q. Now what did you discuss at that time?

A. Well, first, if I remember correctly, we discussed the reconnaissance operation.

Q. Yes, sir.

A. And next in sequence would have been my returning to the formation and joining the formation, and we may have discussed administrative matters at the same time. I don't remember, but the two things we did discuss that I remember about were the reconnaissance mission and the rejoining of the formation.

Q. Now were there any particular instructions that you recall now as to how you were to carry out the reconnaissance mission or was that left pretty much up to your discretion?

A. Well, this was not so much orders as it was discussion about how and when and why. I was told what point to be where, where the people would be, how to contact the people, how I would be able to maintain contact with them from the beach to the ship, and about what time to do it, and then, of course, soon as I picked them up, to clear the beach, proceed with the next phase of the operation.

Q. Now did you discuss at this conference the manner in which you were to approach the formation which included the reconnaissance mission?

A. If I remember correctly I previously testified that during this discussion I proposed a method of doing this to the Screen Commander and he concurred, except for a couple of minor points which after his explantion of these points I agreed with him, and to the best of my recollection that is true.

Q. And what manner had you discussed approaching the formation with Captain Persons?

A. Well, if I remember correctly the plan of operation for that night was that we were to proceed out to a point at sea there, and at about twenty-two hundred we were supposed to make a turn to the north, I mean to the south, and then come back to course. They were to give the Screen until about twenty-three, twenty-five to reorient, to complete the reorientation and then shortly thereafter they were to come to course two seven o which is due west, and as soon as that reorientation was completed, they were to make a minor change of course to two seven three, and proceed to a

point which was called Yoke and this had all been figured out on the chart, time, speed and what have you; it was in the Operation Order, to the best of my memory now. I am strictly on recollection. And the plan was that I was to come up astern of the formation, keep out of the way, so to speak, until at such time she'd come back on to their stated course and after they had turned to the south, and I had made my approach on the proper side, all I had to do was just turn around and I was on station.

Being a C.I.C. man, you know what I mean. And so the other side of the coin was this. There was another formation to the south of us about the same course and speed, which would prevent us from turning to the south—

Captain, suppose—I don't mean to cut you off at all, but I am trying to, if I can, restrict your testimony right now to the conferences that you were holding.

A. All right.

Q. Now then at that conference you had intended to proceed from behind this formation up the starboard side and take your station; is that correct? At that conference?

A. That's true. In other words, I was to approach the formation from astern and take my position.

Q. And that was to be done shortly after the formation had settled on this westerly course?

A. That's true.

Q. Now did you have a conference, you say, you had a conference with Commodore Day or some of his personnel, some of his representatives?

A. True.

Q. Did you discuss with them this joining of the formation?

A. No, sir; I didn't. I don't think. What I discussed with them was the reconnaissance mission.

* * * * *

(Tr., pp. 424 & 425)

Q. Were the intentions of the group as to their courses and speeds made known to you before you sailed?

A. Say again, sir.

Q. Were the intentions of the course of the formation as to course and speeds made known to you prior to your sailing?

A. In a general way, yes, sir. There was a plan which was to be followed. Of course, this plan was contingent upon the situation as presented itself at the time.

Q. So the plan had a certain degree of fluidness about it, to meet the situation as they came up?

A. All plans have to have, sir.

* * * * *

(Tr., pp. 429 thru 434)

Q. Now you prepared on this particular evening a night order book, did you not, Captain?

A. I did.

Q. I hand you here what I believe to be the original of that night order book.

Now, Captain, referring to the entries in that night order book, does this state a time at which you expected to join the formation?

A. May I read it? I mean before.

Q. You might read it, if you would like to.

A. Well, says, We are steaming on course zero seven zero true, speed five knots, to a rendezvous with Task Group at about zero zero zero Roger. That is twelve o'clock midnight. Task Group is on the radar screen. Don't lose them. When we join them, we will go to station three—and we will skip that.

Q. Would you please read that. These records will be introduced in the court.

A. All right. Go to station three and screen three Charlie five.

Q. Three C five?

A. The course will be two seven three degrees, speed twelve knots. We expect to approach the starboard side of the formation and take station three. FREMONT is the guide at station zero. The formation is number two for the heavy ships. Then there is a rough diagram of the formation. Read the standing night orders very carefully before you assume the watch. Very respectfully, A. C. Jackson, Commanding. Then there is a place for the people to initial the night order book and also a note, note to go to general quarters at zero five forty Roger, with my initial.

Q. Now, Captain Jackson, that diagram shows a line from the, to the right of the formation and a big loop coming down into the formation. Now when you drew this night order book, did you contemplate one single turn from a course in the opposite direction from the formation and then one turn to your right which would bring you up there starboard side and into your position?

A. Well—

Q. Now this is a very rough drawing (used blackboard) of the diagram that appears in your night order book, Captain. Did you at the time you wrote

your night order book intend, expect the group to be on a course in this direction?

A. Sure.

Q. And you to come from an opposite course and swing around and come up like that and take your position?

A. That is what I had in mind; yes, sir.

Q. Was that expectation changed because of the fact that these vessels were not on time in their change to the westerly course, or do you know why that didn't happen?

A. I think you are in error in using the word time. Previously testified that there was another formation to the south which prevented them from going to the south.

Q. So that had they turned to the south and then to the west, you would have been in a position to do this?

A. Very true.

* * * * * *

(Tr., pp. 432, 433)

Q. Well, you have testified, I believe, that you were behind the formation, that you followed them around this turn?

A. True.

Q. From north to west. And that you have approached from somewhere back here, up in this direction to takae your station in the screen?

A. Very true.

Q. Now you have an entry in your night order book that you're going to take station three in a given screen. Now did you know when you wrote this night

order book where that position would be with respect to the guide?

A. I am sure I did.

Q. So that it was a definite point that you knew you were to take when you came up there and went into your station?

A. I might also say that that was in a great position, but like all plans you have brought out it would have to be fluid. It could have been changed by the Screen Commander, Commander at his discretion at any time.

Q. Was that screen designation ever changed by the Screen Commander or anyone else?

A. Not to my knowledge, but it could have been.

Q. Did you intend at any time during this evening to go to any other station in that screen except number three?

A. No, sir. Just wanted to point out that it could have been changed. It wasn't hard and fast.

* * * * *

(Tr., p. 434)

Q. Do you know, do you know of any messages sent to your vessel by the FREMONT or by the HOLLIS while you were away on this mission off Camp Pendleton, advising you of the formation axis?

A. Of my own knowledge, no, sir.

* * * * *

(Tr., pp. 437 thru 441)

A. Well, we knew that she was in station zero and in the center of the heavy formation.

Q. You were careful to keep track of where they were, weren't you?

A. Well, I had—maybe not myself personally, but I was certain that other people were doing it.

Q. Now after you had made—at the time you made your arrival report to the FREMONT, you had already reported to the HOLLIS?

A. That's right, to the best of my knowledge; yes, sir.

Q. Now, Captain, were you questioned at the Court of Inquiry about the joining and your concept of how the joining was to be made, or how it was carried out and, specifically, I call your attention to the testimony on page 54 of that body.

A. Yes, sir; I, as a matter of fact, I was not questioned specifically about that. I was more or less asked what happened and then told to go into detail.

Q. Now in the middle of that page, if you could find the sentence, that begins As to my concept of joining the screen.

A. Yes, I see it.

Q. Now would you mind reading that so we'll have it clearly into the record of how you conceived at that time of your joining?

A. As to my concept of joining the screen, I believe I had previously talked this over with my Squadron Commander. I had a slightly different idea but he wanted that one. After I looked at it, I agreed with him.

Q. Now that would mean then at that time, at that point, that you had discussed this method and he was well aware, in fact, he had suggested the method that you actually took; is that correct?

A. I just a few minutes ago testified to the same thing. You may remember it. And practically identical to this. And let's, rather than saying that he sug-

gested the method, as I testified awhile ago, I made a proposal and he made a couple of minor changes to it which I agreed to, as it says here:

Q. And then following this testimony, I will read and you follow me to be sure I have it correctly, Captain.

I was proceed up to where I could take station somewhere in the immediate vicinity of my station, and I would be directed to go right into my station. And I had previously checked with Combat and had given him the best data that I had available, and told him to keep me between one thousand and fifteen hundred yards clear of these two ships. I have here at, in my notes at zero one thirty-eight approximately, I reported to ComScreen, that I was ready to join, and it is possible that I may have misinterpreted the answer that I got. Then there is a portion deleted.

So I was told to wait, and my interpretation of this wait was that I was to wait to be moved or moved to a place so as to be ready to move in when that time came. I could have possibly been mistaken about that. The reason was this, would apparently give more time to reposition the ships. I slowed to fifteen knots and in the meantime this formation was making fourteen knots.

Stopping the reading for a moment—therefore, you received a message from your Screen Commander which you interpreted to mean to you to wait and you slowed down from some higher speed to fifteen knots and did wait; is that correct, sir?

A. That's right.

Q. Going back to the reading:

I don't believe it was executed.

Now to what does that little sentence there refer, if you know?

A. I can't be certain, but Im almost—to the best of my knowledge it was referred to this business about taking a certain station or certain screen.

Q. That's what you believed was in the material that's been stricken out or deleted from the copy that you have there?

A. That's right.

Q. Now going ahead with the reading:

Some time thereafter in order to expedite, an order to expedite came from the Screen Commander, I believe it was, to get into a position where I could take station and I went up to twenty knots, and I was about thirty-seven miles astern of station, about zero two o three, the RUCHAMKIN increased speed to twenty-two knots. On course two six five, I believe that has been previously brought out, and at zero two zero five approximately, I don't remember these times myself, that was determined later, the Task Group or movement element slowed to eight knots and to five knots at zero two o six. In the meantime, the word I got at o two o three; and I believe the way it was worded was to continue to expedite taking station. They went to eight knots, to five knots, and back to fourteen knots. Now it sometimes happens when you have one ship out of station like that and sometimes in joining up, the formation will slow down and let him get on up there, and that was the way I interpreted that slow down. As I got moving along my movement line, here, they went back to fourteen knots, and as far as I was concerned that was still perfectly normal because I was coming up abeam of them. I had about six thousand yards to go and I was making twenty-two knots and I

had informed the Screen Commander that I was making twenty-two knots, and which would have given me, well, it's an eight knot differential which would have taken me up there at a pretty good clip. It was about zero two ten or zero two twelve whenI got the last expedite. As far as I was able to determine I was coming up here and I could see a great many lights over in this area here to my port. I could see the lights from the ships in the main body, which included cargo lights, porthole lights and mast lights, or what you have from this information, and at about I guess zero two one three I sighted a ship which I believed to be this ship.

Now what ship did you mean by that last, this ship?

A. In your Operation Order, as I previously testified to you, I did not know that the Task Group Commander had rotated the axis. I also did not know that the CARTER HALL was missing. And if they had been oriented to the course they were steaming on, which would have been normal, the GLYNN would have been, on the, so to speak, starboard bow of the formation, and CAPRICORNUS would have been on the starboard quarter, and the ship that is referred to there as what I expected to be the GLYNN. Does that answer your question?

Q. Thank you, sir, very clearly.

* * * * *

(Tr., pp. 443 thru 448)

Now I believe you have testified that you sighted or asked for, I am not sure which, a solution from your C.I.C. to tell you how to proceed from where you were to your new station. Is that correct?

A. That's true.

Q. Now did you get a solution from that compartment or that organization?

A. I am certain that I did, and I have previously testified that I was steaming on two six zero, and that—I don't think I have testified in this court—but I have previously testified that I came to two six five and that the solution was two six four which meant that I was steaming one degree to the right of the solution.

Q. Now, Captain Jackson, unfortunately every one who might be interested in this record would not be as familiar as you yourself were with this solution business and what a C.I.C. would do to aid the Officer of the Deck in going from one place to another. But would you say that in order for your C.I.C. to give you a solution, they would have to know where your ship was with respect to the formation, and where you intended to go with respect to the formation.

A. They'd have to know where the guide was.

Q. They'd have to know where the guide was and—.

A. And also where I had to go.

Q. And also where you had to go.

A. And where I was at the time.

Q. So the three things they would have to absolutely know, where you were, where the guide was and where you wanted to go?

A. Well, if you knew where the guide was, you would automatically, well, getting pretty technical—depends on whether you use the center, use yourself in the center maneuvering board or the guide in the center of the maneuvering board.

Q. Well, without becoming too technical, your C.I.C.; did they know that?

A. In other words, the range and bearing of the guide would have provided two of the items of information that you spoke of.

Q. Right. That would provide yourself and --

A. Your position and the position of the guide.

Q. And the position of the guide. Now where would they get the third position, the position to which you were headed?

A. Well, it would come out of your tactical publication.

Q. That would be the station three in that screen?

A. That's right.

Q. Now this course that you were steering was slightly to the right of the formation's course, was it not?

A. About eight degrees.

Q. Now you intended to pass between a thousand and fifteen hundred yards; is that correct? Do you recall whether or not you gave them any more specific yardage than a thousand to fifteen hundred?

A. Previously testified, I think, we read this—I had previously checked with Combat and had given him the best data I had available and told him to keep me between one thousand and fifteen hundred yards clear of these two ships, referring to the CAPRICORNUS and the GLYNN.

Q. Do you recall ever giving them any other more specific distances from those ships than the one thousand to—fifteen hundred yards?

A. Somewhere in my head there is a figure of twelve hundred yards, but I don't remember where.

Q. Would you refer to Question 58 of page 61 of your testimony before the Court of Inquiry.

A. What page?

Q. Page 61, Question 58.

A. You asked me what I said, not what someone else said.

Q. Would you mind reading the question and the answer.

A. It says, Which would mean that the ship number one up here would have a considerably greater distance than one thousand yards. My question is how far do you think you were away from ship number one at the time of the collision. The best thing I can tell you about that is that I had asked Combat on telephone how close will I come to that big ship in the formation which I refer to, to this ship number one here, and he understood that I referred to the ship and he told me about twelve hundred yards.

Q. So that your Combat had told you that you would come about twelve hundred yards from the closest vessel in the heavy ship formation; is that correct?

A. That's correct.

Q. Now is that a perfectly safe way of approaching a formation, twelve hundred yards too close, do you think, Captain?

A. May I enlarge on that a little bit?

I don't think it's too close; no, sir. I frequently operated, fueling and other maneuvers at sixty feet, but that is unusual.

Q. But in maneuvering through a formation, if you say, up a thousand yards, you feel that you're in a safe zone, you're not in a danger zone; is that correct?

A. Well, I'm not in danger from my own people unless they have a breakdown or steering casualty or something of the sort.

Q. I show you a photostat and show you the page, as soon as I can find it, sir. I show you page 95 of a publication of the United States Naval Institute, entitled Naval Ship Handling, which was—

MR. MCGOVERN: Official publication, Mr. Crenshaw? Will you make that plain? Written by your brother.

MR. CRENSHAW: Which was written by Commander R. S. Crenshaw, United States Navy.

BY MR. CRENSHAW:

Q. That on page 95 gives a diagram pertaining to safety or proper or optimum conditions or methods of maneuvering through a formation. It shows there a keep out area, which for a heavy ship—here is the book. That is clearer. Which for the heavy vessel one thousand yards on the side and two thousand ahead and five hundred astern. Now you were outside of that area, were you not?

A. Well, I had told my people to keep me a thousand yards clear of the heavy ships, but I consider my experience and opinion to be just as good as this.

Q. Well, you find fault with this opinion?

A. No, not necessarily, but I would consider that my opinion was as good as that.

Q. I am not criticizing your opinion one bit. I just wanted to find out if you concurred or found fault with that area.

A. Well, I haven't—I have been very briefly show a photostat of something which I haven't had any way to know of what went on before or after context or anything. I am asked to look at one diagram and asked if I agree with it. As far as the diagram goes, we also have another saying in the Navy that you

should go ahead of a mule and astern of a ship too, but that is not necessarily apropos here. Now if I were going to pass this formation and go on independently, I would consider that five thousand yards was a safe margin because I would have no idea what these people were doing. If I were to come up in a formation, in this shell, to pass mail to him, I would have to come within heaving-line distance of him. That is about sixty feet. This information, it was set out to do, is undoubtedly very accurate, but as to whether a thousand yards or sixty feet, is a matter of difference—it's a matter of what you are order to do.

MR. CRENSHAW: I would like to offer this as Defendant's next exhibit.

THE CLERK: Texas Defendant's No. 8.

* * * * *

(Tr., pp. 449 thru 455)

Q. Now, Captain Jackson, as you came up on this maneuver, there came a time when you sighted what developed to be the WASHINGTON. Now where were you standing when you sighted those two white lights?

A. I was oh, somewhere in the port side of the bridge. I don't know the exact spot.

Q. Who else was up there with you, sir?

A. Well, there were several people on the bridge. You mean in the immediate vicinity?

Q. Did you have a port lookout up there with you?

A. He was on the wing of the bridge, to the best of my knowledge.

Q. Did you have the Officer of the Deck there on the bridge with you?

A. He was on the bridge. Yes, sir.

Q. Did you have the Junior Officer of the Deck there with you?

A. He was in the bridge area, but to the best of my knowledge he was in the wheelhouse checking the Combat solutions to the maneuvering board problem.

Q. Did you have a messenger?

A. Yes, sir.

Q. Did you have a starboard wing lookout?

A. Yes, sir.

Q. Now would you say that those men or officers were conducting an alert watch that evening?

A. Yes, sir; I had—if they hadn't been, I would have been somewhat acid about it, because I kept them on their toes. It was my job.

Q. The Commanding Officer of a vessel then sees to it that his lookouts do perform their duties; is that correct?

A. He sees to it that everybody performs his duty to the best of his ability.

Q. Now do you recall whether or not the lookouts were being relieved at or about the time of the collision?

A. Personally I wasn't paying much attention to them. Afterwards I found out that the port lookout had been relieved about roughly a minute before the collision.

Q. Did you have any reports from that port lookout, either the one that was relieving, or the one that had been relieved, about any vessel that would cause you to believe that it was not a naval vessel?

A. No, sir; because as it has been previously proved I was the first one that saw that ship for what it was.

Q. You saw it before Mr. Jarboe saw it?

A. Mr. Jarboe couldn't see it at all. He was in the pilothouse.

Q. Have you read Mr. Jarboe's testimony before the Naval Court of Inquiry, Captain?

A. I possibly have. Yes, but I don't remember the details.

Q. And you would say then that Mr. Jarboe could not have seen the WASHINGTON?

A. Well, to the best of my knowledge he was in the wheelhouse until right before the collision.

Q. If he had been in the wheelhouse, he'd have been behind you, would he not, Captain?

A. No, sir.

Q. Would he be below you, in front of you?

A. If he were in the wheelhouse, well, it's only two steps out there from the wheelhouse to the outside.

Q. And you're sure that Mr. Jarboe was not out to the wing of that bridge prior to the collision?

A. I don't know exactly where Mr. Jarboe was. If you want to know about it, the truth about it, Mr. Jarboe was working maneuvering board solutions. Was taking bearings. He was getting radar ranges. He was moving around. I was paying attention to my own job, not necessarily where he was.

Q. Then your statement as to the fact that you were the first person on the RUCHMANKIN to sight the WASHINGTON may or may not be correct; is that correct? Depending upon what Mr. Jarboe might have done unbeknownst to you?

A. Well, all the evidence that has been previously brought out, and everything that I personally know about it, I will thank you if you will refer to the record that I asked the Officer of the Deck, is that ship

closing on us, and he said that it was, and he changed course from two six five to two seven o and shortly thereafter to two seven five and then went to right full rudder when we discovered the true nature of the ship. I think that if Mr. Jarboe had been aware of the stranger in our—that was an approaching, approaching me prior to the time that I knew it, that he would have told me, since he was right there within a few feet of me. I don't know specifically what page and number you are referring to, but—

Q. Page 137, Question 43.

A. I don't hold—wait just a minute.

Q. The question is put to Mr. Jarboe, What do you estimate the distance the ship was at the time you saw the masthead and range lights? Answer: I would estimate in the neighborhood of a thousand yards because that's what range I expected approximately to pass the formation. It appeared to be at the time one of the ships in formation.

A. Yes, but you said what time did he identify as the WASHINGTON.

Q. I said see the lights. I am not trying—

A. Oh, but you're switching back and forth from one ship to another here.

Q. I am trying to find out when some human on your vessel sighted the lights that developed to be the SS WASHINGTON.

A. Well, I had previously told you that I had seen the lights.

Q. Captain, I don't mean to interrupt you, but there has been a lot of testimony in this case. You have testified before the Navy, before the Coast Guard and now before this Court. Now for the purpose of this litigation, there is no evidence in this case, or any

record in this case except what goes into this court's proceedings, so it will be helpful to the Court and to me and to Mr. McGovern if you could just clarify the situation. We know that you are intimately familiar with this and that you have been through it a number of times and it is difficult to separate these various things in your mind, and I don't mean to be pressing you, but I do want to find out now from you by a simple statement when it was to your knowledge that someone on the RUCHAMKIN sighted the lights that developed to be the WASHINGTON.

A. Well, obviously, Mr. Crenshaw, I can only testify what I know of my own knowledge and I think that I have previously testified what you hold there, that my best estimate that when I first say this ship, that I thought it was about eight hundred yards. I also further testified that I thought that was within two hundred yards of where I expected the GLYNN to be. You have perused that at some length. You know that to be a fact. And Mr. Jarboe had been on the ship approximately five months, and his estimate between a thousand yards and my eight hundred yards is simply a matter of personal opinion. I would say that he probably, if that is the case, saw it about the same time I did.

Q. And that is the basis for your statement that you saw the ship before anybody else in your vessel?

A. I feel certain, reasonably certain that I was the first one to recognize the danger that it represented.

* * * * *

(Tr., pp. 457 & 458)

Q. Captain Jackson, before lunch we were talking about your observations as you came up and sighted

the WASHINGTON. Now, Captain, we have made frequent references to the Court of Inquiry testimony and I would like to make one more on page 55 in the middle of that long paragraph, which runs from a little bit above the middle of the page to the bottom, a sentence near the right edge of the page with the two words "so shortly" and then on the next line thereafter —have you been able to find it?

A. I see it.

Q. Now I would like to read that and have you follow me and let me know if that is correct as far as you could recall.

> "So shortly thereafter I asked somebody, I believe it was the Officer of the Deck who was on the bridge with me, 'Is that ship closing us,' and he said it was. So I, still thinking this ship to be on two five seven, made this maneuver to go into—"
>
> Excuse me—
>
> "So I, still thinking this ship to be on two five seven, making this maneuver to go into station, I ordered the, order to right to two seven o, which was five degrees more than the regular course, and I believe shortly thereafter I gave two seven five. I have no guarantee that this was ever heard. About the same time I took the binoculars and looked at the ship. This was the first time that I saw the bow wave and the green light and as soon as I saw that, I gave the order for full right rudder and it was ascertained later that the furtherest the helmsman got it off was twenty-eight degrees before we got hit. I also have been told that the ship very definitely started to swing to starboard."

Now does that coincide with your recollection, Captain Jackson?

A. It does.

* * * * *

(Tr., p. 467)

Q. In the testimony of Mr. Hirshman to which you have prevtiously been referred, reference was made to ranges and bearings obtained by your C.I.C. to the guide for the benefit of the Commanding Officer. Now do you recall requesting ranges and bearings from C.I.C.?

A. Well, I must have, because I was going to station. I wanted to know what they were. Also, Mr. Jarboe was plotting up there. He had to know also.

Q. Do you have any recollection of the frequency of those requests?

A. Not specifically; no, sir.

Q. Did you know what scale the C.I.C. was operating the radar on?

A. No, sir; not of my own knowledge. I understand that they were shifting from using about three scales, but I don't know that of my own knowledge.

* * * * *

(Tr., p. 469)

Q. Now, Captain, it is customary, is it not, that both officers involved know very definitely when one or the other has the con; is that correct?

A. Very true.

Q. And likewise, if an Officer of the Deck relieves another Officer of the Deck, both of those officers understand when one has it and when the other has it; is not that right?

A. True.

Q. Isn't that more or less of a tradition and fundamental principle in the Navy?

A. It is.

* * * * *

(Tr., pp. 472 & 473)

Q. Now, Captain, when you reported to the Screen Commander and he gave you an order to close the formation and get ready to take your station, or whatever the actual text of that order was, what position were you actually heading for?

A. Well, I was going to move up into the vicinity of station three in the screen.

Q. By the time you got there, would you expect the Screen Commander would have moved the other vessels away so you could go ahead and get on station three in the screen?

A. That is true.

Q. And you have testified, have you not, that the O'HARE appeared to you that she had already commenced to do that; is that right?

A. And the HOLLIS too, but the best of my knowledge, I can't be sure.

Q. Captain, is the C.I. net piped to your bridge or was it piped to the bridge of the RUCHAMKIN?

A. I don't remember, but to the best of my knowledge it was not.

Q. Do you recall hearing any messages at all then about solutions of radar contacts of the various vessels in the formation?

A. I previously testified twice that I don't know, that I never heard anything like that.

Q. Do you know why your C.I.C. would not have received such a message if it were sent?

A. I don't know, but I do know from having talked to other people later, I was not the only one that did not hear it.

* * * * *

(Tr., pp. 477 & 478)

Q. Now, Captain, did you look at the position of the two vessels while they were together?

A. Yes, I did.

Q. How far was the WASHINGTON's bow up to your vessel at that time? Was it just touching or was it well into your ship?

A. It was well into it.

Q. Certainly it was.

Now the WASHINGTON struck your vessel abaft of midships, did it not?

A. That's right.

* * * * *

(Tr., p. 480)

CHARLES W. ELLARD, starboard lookout, USS RUCHAMKIN, a witness called by the Government * * *

(Tr., pp. 482 & 483)

CROSS-EXAMINATION

BY MR. CRENSHAW:

Q. Mr. Ellard, did you see anything to the port of the center line of your ship as you came up?

A. Not that I can remember.

Q. Could you hear any discussion on your bridge concerning what they saw on the port side?

A. No, sir. I was out on the starboard wing.

Q. You know nothing about the collision except that you heard the whistles?

A. Whistles and hard right rudder.

Q. Did you hear full right or hard right?

A. I just don't remember what it was, but I know it was the right rudder.

* * * * *

(Tr., p. 487)

JOSEPH J. CWALINA, Engineer, USS RUCHAMKIN, a witness called by the Government * * *.

(Tr., pp. 488 & 489)

THE COURT: Your engines were turning over at what r.p.m., Chief?

THE WITNESS: Three hundred sixty-five revolutions per minute.

THE COURT: And to what—give you what speed?

THE WITNESS: Approximately twenty-two knots.

* * * * *

(Tr., p. 489)

THEODORE MILAN SLAHEY, Screen Commander's CIC watch office, USS HOLLIS a witness called by the Government * * *.

(Tr., p. 494)

Q. Well, now, where was the radar track of the tanker plotted?

A. It was plotted with a grease pencil on a glass top plotting board which is called a summary plot.

* * * * *

(Tr., pp. 497 thru 501)

Q. You were the staff watch officer in C.I.C. of the HOLLIS; is that correct?

A. I was an officer of the staff stationed in the C.I.C. of the HOLLIS for a specific purpose which was to handle voice communications for the Screen Commander on the screen common secondary and also to provide him with such information as I could from the C.I.C. of the HOLLIS.

Q. Now in the execution of those duties were you aware generally of what was going on in the C.I.C. of the HOLLIS?

A. Can you be a little more specific as to what?

Q. Were you aware of the plotting activities of the personnel in the HOLLIS?

A. The personnel in the HOLLIS were plotting—yes, I was aware of that. From time to time, I observed what they were plotting, especially when I would receive a request from the bridge, from the Screen Commander.

Q. How do you recall any of the questions that you did receive from the Screen Commander on the bridge?

A. According to the testimony in the Court of Inquiry, he requested information on the plot of the target which later was determined to be the SS WASHINGTON.

Q. He asked for a C.P.A. in a solution, and so forth, did he not?

A. He asked for a Closest Point of Approach course and speed.

Q. He was told, as I recall, to wait, that you, that the C.I.C. was having difficulty because of a change of course; is that correct?

A. That's correct.

Q. Now do you know whether or not subsequent to that time a solution was sent to the Commander aboard the HOLLIS?

A. I do not know.

Q. Now you have testified before on your direct examination about the approach and the relative motion of the SS WASHINGTON as she same in, as you could tell from your radar plot. Now I have here a maneuvering board which has been, on which has been drawn small lines indicating the position of the various vessels in the screen and the heavy ships. Now I wonder first if you would look at that and let me know if that is a reasonable presentation of the formation as they were steaming on course two five seven? Does that appear to you to be correct?

A. It appears to be correct; yes, sir.

Q. There has been introduced into this litigation but the deposition has not been read in court, the deposition of one Moorhead who was the C.I.C. officer aboard the FREMONT. He was the flag, the head of the flag C.I.C. for the O.T.C. Now attached to that deposition is a page which is entitled The Report of Collision and it says that at zero one-fifty solution was —excuse me, let me start at the beginning.

Skunk had been on a summary plot for some time prior to change of two five six. At zero one five o, but was passing well clear. Course was then two seven o, speed fourteen. At on-fifty solution was begun and contact was plotted every minute until it was obtained. Contact F, bearing was two two nine degrees range six point seven when solution was sent to flag bridge and over the C.I. nets.

Now would you mind putting a red mark at two two nine degrees six point seven miles.

Let me caution you that each of those lines is one thousand yards, not one mile.

I will give you another board, Mr. Slabey, so that there won't be any confusion.

A. No, this will be all right.

(The witness marked the paper.)

Q. That would be two hundred and twenty-nine degrees true range six point seven miles. Now you have put a red dot—that would be roughly thirteen thousand four hundred yards then, would it not?

A. It would be exactly. Yes.

Q. Now there is—to continue—the SAN MARCOS has been requested to report Fox but did not hold the contact. Therefore, the FREMONT sent out contact reports. Solution was originally collision with CAPRICORNUS at two o nine. With contact on course zero one five, speed twelve. Solution was checked, when checked was again sent over C.I. net and to the flag. At this time contact was bearing two three two degrees, three point nine miles range.

Would you put another mark there?

A. (Marked.)

Q. At this time Contact Fox was bearing two three two, three point nine miles, and solution was given that Contact Fox would pass through the screen and clear of the formation with C.P.A. of three hundred twelve degrees true, seventeen hundred yards from the FREMONT.

Now—

A. It doesn't agree with—

Q. Does the conclusion that they make agree with the plot that you have drawn on that maneuvering board from that second plot?

A. Not quite. What was the range from the FREMONT?

Q. The first solution was collision with CAPRICORNUS. The second solution was three twelve true from the FREMONT and seventeen hundred yards away from the FREMONT.

A. Plotting these figures it would look to be three twelve degrees true from the FREMONT at approximately a thousand yards. I don't know which of these dots is to represent the CAPRICORNUS.

Q. The CAPRICORNUS is the one through which your red line passes.

A. Then it would be a collision with the CAPRICORNUS.

Q. Based on those two plots?

A. Based upon those two plots.

Q. And does that red line coincide somewhat with the relative motion line that you recall and to which you testified?

A. I wonder if I might see that diagram which I drew at the deposition and signed my name to.

MR. MCGOVERN: That is Texas No. 1. Your Honor, Mr. Crenshaw and I are looking for Texas No. 1 which is a diagram which this witness drew for Mr. Crenshaw, and apparently it is not—

MR. CRENSHAW: I have it at the motel, if Your Honor please. I didn't know this witness was going to appear in person. We had already taken his deposition and I didn't bring the deposi-

tion in. The diagram, I know of it there, and I am at a loss to say why I can't give it to him at this minute.

* * * * *

(Tr., pp. 503 & 504).

Q. Now, Mr. Slabey, I show you a photostat of a maneuvering board which was exhibited, which was introduced into evidence during the Coast Guard by the Commander of the Task Group, and which was, purportedly was drawn from his radar ranges and bearings, or someone in his C.I.C.

Now does that line look to you to be substantially correct as far as location is concerned?

A. Yes.

Q. Now, Mr. Slabey, referring once again to the maneuvering board with the red lines and your signature on it, do you recall the tracking, the actual tracking of the WASHINGTON in that C.I.C.? Do you recall when it was commenced and when it was stopped with relation to your formation, for the screening vessels?

A. As for the stopping, to my memory, it was stopped, the tracking was stopped on the HOLLIS some time, approximately zero one-fifty, or thereabouts.

Q. It was started then about zero one-fifty; is that correct?

A. It was stopped then.

Q. Your tracking was stopped at ten minutes of two?

A. Th- s—

Q. We are speaking of the WASHINGTON, the ship that came in from up ahead.

A. I know you are. I am trying to connect the time zero one-fifty with the position of the WASHINGTON at that time. The track was—I saw no more tracking after the WASHINGTON had come through the screen.

* * * * *

(Tr., pp. 507 thru 511)

MR. CRENSHAW: I would like to introduce this as the Texas Company's next exhibit.

THE CLERK: Texas Defendant's No. 9.

THE COURT: Let it be admitted.

(The Clerk so marked the document as Texas Defendant's Exhibit No. 9 in evidence.)

BY MR. CRENSHAW:

Q. Mr. Slabey, you have testified about a message that was transmitted to the RUCHAMKIN at or about ten minutes after two. Do you recall that?

A. Twelve minutes after two.

Q. Twelve minutes. Thank you, sir.

Now that message, as I recall, was a tactical message to the effect that stand by to form a five-ship screen, to actualy formally form it; is that correct? And they would be told at a later time when actually to do that; is that correct?

A. It's not exactly correct. The message was a message which said, at my command at a later time form a certain five-ship screen.

Q. Now you sent that message out to the CORRY, to the LLOYD, to the O'HARE, and to the RUCHAMKIN at twenty minutes after two; is that correct?

A. That's correct

Q. Now you got acknowledgments or Rogers or indications of receipt of that message from the CORRY, the LLOYD, and the O'HARE; is that right?

A. I got Rogers, receipts from those ships and a verbal receipt from the HOLLIS.

Q. But you did not get any acknowledgment or Roger or indication of receipt from the RUCHAMKIN; is that correct? At that time, at the same time of the others?

A. Yes, when the RUCHAMKIN's turn came to answer they did not answer, and the next ship answered. It's an alphabetical business. The ships answer in alphabetical order their call signs and the standard procedure is that when a ship does not answer in its turn, the next ship waits five seconds and they go on and the ship who missed its turn answers at the end of the others.

Q. Excuse me.

A. The RUCHAMKIN did not answer either in her turn or at the end after the others had answered.

Q. So then what did you do about that, sir?

A. I took the microphone in my hands and I said, "RUCHAMKIN, this is Screen Commander. Do you Roger my tactical message?"

Q. What answer did you get, sir?

A. "Screen Commander, this is RUCHAMKIN. Say again your tactical message."

Q. And then what did you do?

A. I repeated the tactical message to the RUCHAMKIN in using the voice radio procedure.

Q. And then what did she do, sir?

A. She came back almost immediately with this loud squeal.

Q. So that from two-twelve or from the time that the other ships acknowledged your message at two-twelve until the collision you were trying to raise the RUCHAMKIN over that voice radio circuit?

A. Approximately one minute of time. I have in my notes at the time, I marked the time of the RUCHAMKIN's message, We are rammed, we are sinking; save us, or words to that effect as being at two-twelve. That would mean that the other three ships and the HOLLIS had Rogered for the message at, it was two-eleven.

Q. So that from your information the message concerning the collision came in about two-twelve?

A. Yes.

Q. Now that was over which circuit, sir?

A. The secondary screen common circuit.

Q. Were you using the C.I. nets yourself or was someone else using that in C.I.C.?

A. I was not using it.

Q. Do you recall your sending, or anyone else sending a solution to Captain Day? Excuse me, Captain Persons, to the effect that the WASHINGTON would pass eight hundred yards astern of the RUCHAMKIN?

A. You—

Q. Do you remember that solution going to the Screen Commander from your C.I.C.?

A. Oh, I thought you were still on the C.I. net.

Q. No.

A. No, I do not remember, but I would not necessarily have known if it had.

Q. When was the first time you ever heard of any message, any solution like that just now?

A. That a solution such as the plot of the WASHINGTON?

Q. No. Such as eight hundred yards astern of the WASHINGTON.

THE COURT: Not astern of the WASHINGTON.

MR. CRENSHAWS Excuse me. Of the RUCHAMKIN. When did you first hear of that solution in your recollection?

THE WITNESS: No, my recollection just now—

BY MR. CRENSHAW:

Q. And you went through the Naval Inquiry testimony, the hearing before the Board, Naval Court of Inquiry, did you not?

A. I appeared as a witness before the Board.

Q. Would it be fair to say that you have discussed this case with other members of the staff and other members, people aboard the HOLLIS after the collision?

A. Yes, that is a fair statement.

MR. CRENSHAW: That is all.

* * * * *

GEORGE A. JARBOE, JOOD, USS RUCHAMKIN, a witness called by the Government * * *.

(Tr., p. 515)

DIRECT EXAMINATION

(Tr., p. 517)

— Now in order to go from the point which you have marked P.P.I. scope, over to the left-hand wing of the bridge, how many steps would you have to take, about?

A. Probably about a half a dozen.

Q. What were you doing with the P.P.I. scope out here on the wing of the bridge on the watch just before the collision?

A. I had been mostly concerned with the visual picture of the ships. I was standing largely out on the wing scanning the horizon, picture the formation as well as I could visually, and I would occasionally walk over to the P.P.I. scope and look at the presentation on the scope, and try and picture in my mind which lights belonged to which ships out on the horizon

* * * * *

(Tr., pp. 522 & 523)

CROSS-EXAMINATION

BY MR. CRENSHAW:

Q. Mr. Jarboe, when was it that you were in the pilothouse, or chart room, or wherever it was, that you were actually working out your maneuvering board with respect to the collision? A matter of how many minutes?

A. Oh, I probably came out of the pilot house about two minutes, roughly, before the collision.

Q. And how long had you been in there, sir?

A. Oh, roughly, four to six minutes maybe.

Q. Prior to that you had been out on the open area looking at the formation and comparing to the radar; is that correct?

A. Yes, sir.

Q. And were you having difficulty in ascertaining individual ships?

A. Yes, sir.

Q. Now when you looked at your radar on the bridge, do you recall what scale it was on when you looked at it?

A. Mostly, well, in fact, about the only scale I remember is twenty mile scale.

Q. Twenty mile scale?

A. Yes, sir.

Q. You never shifted to a lesser scale to help you pick out these contacts?

A. No, sir.

Q. When you went into the area to work out your maneuvering board solution, where was that solution to take your vessel?

A. Well, sir, it was to take it to the position in the screen in which we were to occupy.

Q. Is that designated as station three in that 3C5 screen?

A. Yes, sir.

Q. And that is the place that you were telling the Captain how to get to by your solution?

A. Oh, I was just checking on C.I.C.'s solution actually.

Q. You were just checking that?

A. Yes, sir.

* * * * *

(Tr., pp. 525 thru 529)

Q. Now, Mr. Jarboe, were you proceeding along, or was your vessel proceeding along the track that you had laid out, or that C.I.C. had laid out there? Did they seem to be moving up along that line properly from what you could tell prior to the collision now?

A. I don't know of any particular line, but we were moving up as had been expected, but, of course, the formation had changed several times and these solutions aren't instantaneous. We have to just rely on what you call the seaman's eye.

Q. Did it look, according to your seaman's eye, that you would probably come up, say, about a thousand, twelve hundred or fifteen hundred yards from the GLYNN or CAPRICORNUS, the nearest heavy vessel?

A. Yes, sir. Not the guide, because there was a circle of ships around the guide, but we were going to clear the outermost ships by a thousand or fifteen hundred yards.

Q. The GLYNN and the CAPRICORNUS are the outermost ships, sir?

A. Oh, I am sorry.

Q. Did you hear of a speed change by the formation?

A. Yes, sir.

Q. Did you hear of two speed changes by the formation?

A. Yes, sir.

Q. Did you have any discussion or any conjecture about why they were made, or did you know why?

A. Well, we didn't know. I just supposed that the were waiting for us to hurry up and get in the position. We didn't have so very much speed. In addition to what they were making, and it would have taken us quite awhile to get in the station, if they had continued on twenty-four knots.

Q. Was that opinion shared by the other officers on your bridge?

A. Apparently.

Q. Now would it be fair to say that you all were paying, were concentrating on this approach to your station quite carefully?

A. Yes, sir. But not to the exclusion of any safe navigation of the ship, of course.

Q. Weren't you asked the question substantially similar to that, to that before the Court of Inquiry?

A. Possibly.

Q. I am reading you Questions 73, 74, 5 and 6, on page 140.

"Mr. Jarboe, thinking back for a period of about fifteen minutes prior to the collision, can you state whether or not it is true that your duties were primarily concerned with the steps necessary to join the screen?"

The answer was, "Yes, sir."

The next question —

A. I believe that was my own job and I thought the question just asked was were the people on the bridge of RUCHAMKIN, that is, that's the way I interpreted it.

Q. The next question was,

"Would you say that you may be able to say that is true of the Officer of the Deck and the Commanding Officer?"

The answer to that question, "I believe so; yes, sir.

The next question,

"Do you recall any instructions given you to take station?"

"I don't recall. Well, yes, sir. I believe after we reported in, reported that we were there and ready to take station, first, we were given a wait, and after a period of minutes, I couldn't estimate the time, we were told to expedite taking station."

Now does that coincide with your recollection of those proceedings?

A. Yes, sir; I am sure that is my correct testimony.

Q. Now as you approached do you recall seeing side lights on the main body?

A. I really don't recall.

Q. Do you recall particularly which ship was the CAPRICORNUS, or do you know which ship was the CAPRICORNUS?

A. I did for awhile know which ship was the guide and that was the only ship I was ever really able to pick out individually. Only then because our signalman was flashing a visual signal to that ship which was answering.

Q. Now had you some ten or fifteen minutes prior to the collision, used your binoculars in aid of your visual search for these vessels for the formation?

A. I believe—I'm not sure. I probably did.

Q. Do you recall whether or not you ever sighted any extra lights, or any lights that you didn't expect to see by use of your binoculars or by your own eyes?

A. No, sir.

* * * * *

GEORGE H. WHITING, Chief Staff Officer, USS FREMONT, a witness called by the Government * * *.

(Tr., p. 530)

CROSS-EXAMINATION

(Tr., p. 535)

Q. There has been reference to a group of ships to the south of your group. Would you think that this was an identification of that group?

A. Yes, sir; that is correct. That is, the ships that were moving as a body. Perhaps there were other ships around. This was the ship that was —

Q. But at least that is one ship that was there, that ComCar Div four—that is the Commander of a Carrier Division, aircraft carrier?

A. Yes, sir.

Q. That would be a number of ships, I suppose?

A. Yes, sir; I presume it would be an aircraft carrier with escorting destroyers.

* * * * *

(Tr., pp. 538 thru 542)

Q. Now over on page 6, there is an entry at the very top of that page for which I do not see a time, to the Commander Screening Unit from Commander movement element. What does RUCHAMKIN bear from me. Over. Then there is the word wait. Would that be the answer from the Screen Commander?

A. The wait would be, sir.

Q. The wait?

A. Yes, sir.

Q. And then two messages down, there is another untimed message, or there is no time for it. Commander movement element from Commander Screening Unit, RUCHAMKIN bearing zero six five from you.

You see that? It's about two messages below the one we just read at the top of the page. Is that correct, sir?

A. Yes, sir.

Q. Now then, two messages below that—no, excuse me. The next message is from Commander movement element. Two words. Roger and out. Now does that mean the Commander movement element received

the message that the RUCHAMKIN bore z o six five from him?

A. That's correct, sir.

Q. Now the next message is to the CAPRI CORNUS from the Commander movement element, the single word, station. Now what would that mean, Captain Whiting?

A. It would mean that the CAPRICORNUS is not exactly in her assigned station and is directing the CAPRICORNUS to get in her assigned station. She may be a little behind bearing, or ahead of bearing, and the officer in Tactical Command wants her to get right on position.

Q. Now that would be one of the duties assigned to either the officer in Tactical Command, or one of his staff officers, would it not, to see that these ships were on station during the course of the night?

A. Yes, sir.

Q. I couldn't hear that.

A. Yes, sir.

Q. Now did you have that responsibility, or did Mr. Nelson have that responsibility, or did Captain Day have it?

A. It is normally the Staff Watch Officer's responsibility to insure that the ships of the formation are in their proper station. If the Division Commander is on the bridge at the time, the Staff Watch Officer will, of course, call his attention to it, and ask if he should tell the ship in question to get back on station.

Q. Now do you recall any other times during this particular evening that a similar message was sent to any of the other ships in the formation?

A. To —

Q. To get on station?

A. To get on the station. I don't recall the particular; no, sir.

Q. Would that indicate to you then that the vessels were substantially on station throughout the night?

A. Why, I know from being there most of the time that they were, sir.

Q. And they were?

A. And this also indicates it; yes, sir.

Q. And to your knowledge were the screening ships on their stations during most of the night?

A. As far as I know; they were, sir.

Q. Now down at the next entry—excuse me—one that was originally zero six hundred and which has been corrected to zero seven hundred, that would be two o'clock your local time, would it not?

A. One o'clock, sir. When it is seven, it would be two o'clock.

Q. Now that is a message to the Fast Movement Unit Commander Screening Unit from Commander Movement Element. Execute speed eight.

Now would you tell me first in plain language exactly who that was sent to and exactly who it was sent from?

A. Commander Movement Element would be the officer in Tactical Command, Captain Day. The Fast Movement Unit would be the main body.

Q. The heavy ships?

A. The heavy ships. Commander Screening Unit would be Captain Persons.

Q. Now that was, that message is logged at two o'clock local time, is it not?

A. Yes, sir.

Q. Now there has been testimony that that message was not received by other vessels until four minutes after two, or five minutes after two, and I believe you were questioned about that at the Court of Inquiry as to the delay in that message.

Do you recall first the delay and second being questioned about it?

A. I remember being questioned about delays in general. I don't recall that the questions pertained to this particular delay.

Q. Do you know now why that message was held up for four minutes?

A. No, sir; I don't recall now.

Q. Did you say you had difficulty in transmission? Was that diffculty in getting your tactical messages out throughout the course of the evening, or —

A. We had some difficulty throughout the course of the evening in getting ships to acknowledge receipt of messages.

* * * * *

(Tr., pp. 544 thru 551)

Q. Now what precautions did you take with respect to that shipping, if you took any, in your navigation? Did you take that shipping into consideration when you navigated this formation?

A. When I say I navigated, sir, I did not lay out the proposed track that we were to take that night. That was laid out and approved by the Division Commander—well, actually when I was in the Midterranean.

Q. Well, now, the original plan was to go out east, then south, then west, then to some rendezvous?

A. Yes, sir.

Q. But you couldn't do that because of this group to the south, so they went out and then turned north?

A. Yes, sir.

Q. And then back to the west?

A. That's correct.

Q. Well now, were you navigating at the time that they turned from two seven o to two five seven?

A. Yes, sir.

Q. Now why did you change at the particular time that you did change from two seven o to two five seven? Do you remember that?

A. The Division Commander asked for a course to head for the positions we had to reach off Camp Pendleton. I determined that course and he gave the course change.

Q. Now that is designated, I believe, as Point Yoke, was it not?

A. I am not sure of the designation of that.

Q. But anyway, you gave him a course from presumably where he was to the point off the beach; is that right?

A. That's correct, sir.

Q. And that is all you were trying to do, was get from one place to another?

A. That was the purpose in the navigation; yes, sir.

Q. When you gave that course to the Division Commander, you looked at your chart, I suppose, to see that there were no reefs or rocks or lighthouses or shoals between you and that point, did you not?

A. Yes, sir.

Q. So that it was safe from that standpoint?

A. That's right.

Q. Did you make any inspection of your radar or

inquire of your C.I.C. as to whether it was clear from a shipping standpoint?

A. As I recall, in figuring that course that didn't enter into it, sir, because all the Division Commander wanted to know is what is the course from here to there. As I recall, the Division Commander obtained the information you were speaking of before he gave the order to change the course.

Q. What was that last part? I beg your pardon, sir.

A. The Division Commander asked of me, what is the course from here to there.

Q. Yes, sir.

A. I worked it out and gave it to him. He then gave the order to change the course, as I recall, after he determined that shipping was, would not interfere with going on that course.

Q. Now what did he do to determine that shipping would not interfere?

A. He would normally have, and I don't recall exactly what he did, sir, because I don't know that. I was standing right by him at the time. He would normally ask C.I.C. if such a change of course would run us afoul of any shipping in that direction.

Q. Now you have no recollection of his making that inquiry on this night, or have you a recollection?

A. I don't recall specifically, sir. It was something he normally did.

Q. Do you know whether any of his other subordinates, officers, would know about that?

A. I don't know, sir. The Staff Watch Officer might know. It was only a thirteen degree change of course, as I remember.

Q. Were you aware of the presence of the WASHINGTON at that time yourself, sir?

A. No, sir.

Q. Did you make any inquiry of C.I.C. as to shipping out there yourself?

A. No, sir.

Q. You haven't, I suppose, had an opportunity to read Mr. Moorehead's testimony which has been introduced as a deposition in this case, have you, Captain?

A. I have read no testimony other than my own, sir.

Q. Mr. Moorehead testified, on page 7—well, we, of course, had the contact on our scope before it was designated, when the course was two seven o, but at that time it presented no threat to the formation. We didn't designate the contact. When we changed course to two five seven, we could see on our VK-2 repeater that this particular ship was on a collision course with us. So we immediately designated it as Raid Fox. We gave it a designation and asked the SAN MARCOS to repeat it. As I said, when they didn't hold it, we sent it out all over the net that we would report it. When we did develop the solution it was on a collision course with the formation, and we so sent out that report.

Now did they give you a report of that situation?

A. I heard that report from C.I.C., sir.

Q. Now Mr. Moorehead speaks there of a collision solution with the formation. Now what does he mean by that solution, Captain Whiting, collision with formation?

A. He means that if the formation continues on its present course and speed, and the stranger continues on its present course and speed, eventually there will be a collision between the two.

Q. So that would mean then that the stranger would at some future time come inside the formation, would it not?

A. If he, usually designates a particular ship in the formation with which collisions will occur, sir.

Q. I believe that that was subsequently done, that a solution was sent out to CAPRICORNUS, but according to Mr. Moorehead's testimony there, he is talking about solution collision formation. Now if you heard that from your C.I.C., what would that mean to you, sir?

A. I would immediately ask him to give me just where the formation collision would occur.

Q. Now do you remember what you did do in this particular, on this particular night when you received the C.I.C. report?

A. As I recall, the report I received specified CAPRICORNUS.

Q. You don't recall one that just collision formation?

A. No, sir; I do not.

Q. Now, Captain Whiting, you have had considerable experience, I suppose, in sailing either as a part of such a formation, or on staffs, or attached to commands that have sailed in formations, have you not?

A. Up until that time I had been Chief Staff Officer under Commander Transport Division 22 from February of 1952 until that date. That was the extent of my experience in sailing with formation, sir.

Q. Would you say, sir, that it is a dangerous thing in itself when a stranger vessels comes inside of a naval formation?

A. Yes, sir; I would.

Q. Now, Captain, do you recall any distances given at the time of this C.I.C. report, distance as to the WASHINGTON?

A. As I recall it was six or seven miles, sir.

Q. When you were given a course to navigate, or when you were consulted as to what the formation should do with respect to your movements right, left, or slow or speed, were you thinking in terms of the formation, were you not, as the staff, as being on the staff?

A. Yes, sir.

Q. And when you say formation, I mean screening vessels as well as heavy vessels; is that correct?

A. Are you speaking from a navigational standpoint, sir, or any change of course to avoid contact?

Q. I am speaking with you, say, to the formation change course from north to west, you contemplate all of those vessels changing course as you direct, do you not?

A. Yes, sir.

Q. So that in, you have this sense, you have this great entity again changing its course from north to west; is that correct? Is it not?

A. Yes, sir.

Q. And when you sight a contact, or when a contact is reported to you and you are charged with the operation or the control of a body of ships like this, if you were to avoid them, you would have to do so early, would you not, sir?

A. If the formation were to avoid a contact?

Q. Yes.

A. I think you should normally take action early; yes, sir.

Q. Because of the size of this group, that set out something like this (illustrated on blackboard), if you don't maneuver that early, you won't have enough time for any maneuver to be effected, would not that be correct?

A. I don't quite understand, sir, the question.

Q. Captain, you have testified that it is dangerous for a vessel to come into a formation.

A. Yes, sir.

* * * * *

(Tr., pp. 552 thru 555)

Q. Approximately, when, Captain Whiting, did you have first knowledge of the position of the RUCHAMKIN?

A. The first knowledge that I had that the RUCHAMKIN was close to the formation was at the time of the collision, sir.

Q. Now do you recall any activity on the flag bridge or among the flag officers concerning a contact at a bearing of zero six five?

A. I recall that I had just stepped out on the wing of the bridge and someone, I believe it was the Staff Watch Officer, came around from the port side of the bridge to the starboard side where I was, and asked me if I saw a contact back in the direction of the starboard quarter, and I think he specified zero six five, and I looked and did not see anything at that time. I did not know then that I was looking for the RUCHAMKIN.

Q. Now was there anyone on the staff that was paying particular attention to where the RUCHAMKIN was while she was on this independent mission and proceeding to rejoin your group?

A. No one was given that particular duty, sir.

Q. Captain Day as Commander of Task Group eighty-six point two, was, was he not?

A. I think that is the designation, sir.

Q. And the RUCHAMKIN was a vessel under the command of Commander Task Force Group eighty-six point two, was it not?

A. Yes, sir.

Q. Now would you say it is normal for a Group Commander to be interested in the whereabouts of his units?

A. Yes, sir.

Q. Did Captain Day take any steps to your knowledge to ascertain the whereabouts of the RUCHAMKIN?

A. The Screen Commander sent a message to Captain Day advising him of his intention to change the screen formation to a five-ship screen in order to admit the RUCHAMKIN. That message I saw at the time it came in. Later I think it was after the collision I learned that Captain Day had asked the Screen Commander for a position of the RUCHAMKIN on receipt of the message regarding the change of the screen formation.

Q. Can you—excuse me.

THE COURT: I do not think he has finished his answer yet.

THE WITNESS: And that is where the zero six five answer came back, and I think perhaps there was a distance along with the zero six five.

BY MR. CRENSHAW:

Q. Do you have any recollection of how, of what time that inquiry was made; was that the one that we read in the radio entry, the radio logbook? That at zero one-forty?

A. I think Captain Day's message went something like this. What does RUCHAMKIN bear from me, and I think that is the same one, sir.

Q. That was on this radio log just prior to the message at zero six-forty?

A. Yes, sir.

Q. This is a copy of it. Would that indicate to you that the message was sent just prior to that time?

A. Yes, sir. Sometime between zero six-thirty and zero six-forty Zebra time.

Q. Now did Captain Day personally ask you anything about the position of the RUCHAMKIN?

A. No, sir. He did ask about what the screen would look like when it was opened up to admit the RUCHAMKIN and I drew him a little sketch at that time.

Q. And was that about the time of this message, about twenty minutes of two, would you think?

A. I think that is correct, sir. It was right after we had received the message from Captain Persons stating that he planned to open up the screen.

Q. Now, Captain Whiting, do you recall the receipt on board the FREMONT of an arrival report sent by flashing light from the RUCHAMKIN to the FREMONT?

A. Not before the collision, sir. I did see it after the collision and noticed that it had been received before the collision, but I did not know it at that time.

Q. That message, according to the copy here, had

been received at one-forty-two, had it not?

A. I don't recall the exact time, sir. I recall that it was before the collision.

* * * * *

(Tr., p. 556 thru 559)

Q. Can you tell me what time it was received by looking at that, sir?

A. One fifty-five Roger, sir.

Q. One fifty-five. That would be local time?

A. Yes, sir.

Q. We have then referred to Government's Exhibit No. 14.

Now do you recall testifying before the Court of Inquiry that the receipt of that message was at zero one forty-two?

A. No, sir; I don't.

Q. Captain Whiting, on page 47 of your testimony before the Board of Inquiry, I find the following questions one sixty-two, and three. You have testified that after the collision you saw a write-up of a movement report which had been received by flashing light from the RUCHAMKIN. Do you remember the time of receipt of that movement report?

Answer: The time of receipt as I remember that was typed on the copy, was zero one forty-two, or very close to that.

The next question was the fact that a ship was signaling by flashing light reported to you or to the flag bridge by your lookouts around zero one forty-two. Your answer: Was that fact reported to me by the lookout, sir?

The question: To you or to your knowledge to anyone else on the flag bridge? The answer: No, not to my knowledge that I remember.

Now does that coincide with your recollection of your testimony?

A. As I recall, yes, sir. I was probably thinking about the date time group.

Q. So that you took the time from a typed copy that you had seen; is that correct?

A. Yes, sir.

Q. Now, Captain Whiting, the lookouts that are on the staff bridge, or on that level, are they required to report to you, or to the staff watch officers or to the O.T.C. of what they, whatever they might sight?

A. Yes, sir.

Q. Now who looks after, who sees to it that they do their job properly?

A. The staff watch officers, sir.

Q. Now you testified there at the Court of Inquiry that no report was made to you, or to anyone else of the staff of the receipt by the FREMONT of this visual message from the RUCHAMKIN.

A. To my knowledge.

Q. Now can you explain why you don't know about that, or why no one else seems to know about that?

A. I believe at that time the Division Commander was on the bridge, and since he was the senior officer on the bridge, the Staff Watch Officer would deal directly with him rather than with me, and as I was either in flag radio or out on the wing of the bridge, or looking at the P.P.I scope, so I was sort of out of the picture there at that time.

Q. Well, now, as I recall, Captain Day's testimony was to the effect that he also had no knowledge of that flashing light message until after the collision. Do you know why the fact of receipt of that would not be reported to either you or Captain Day?

A. No, sir. As I recall it was a deferred message. The fact that it was assigned deferred precedence indicates that it has not too great an urgency.

Q. Well, can you tell me what the Group Commander or the O.T.C., Captain Day, was doing to keep himself informed of the whereabouts of the RUCHAMKIN which he obviously expected to rejoin his formation?

A. He asked the Screen Commander to give him a position of the RUCHAMKIN, sir, and the Screen Commander did, and —

Q. Then in your mind then that would be sufficient to locate the RUCHAMKIN?

A. Ordinarily it would, sir.

Q. Now if the RUCHAMKIN, if the range to the RUCHAMKIN from the FREMONT at this particular time were about sixty-five hundred yards and the RUCHAMKIN were not dead astern in this blind spot, would there be any reason in the world why she wouldn't appear on the P.P.I. scopes up on your flag plot?

A. I think it should appear. I don't recall the scales we had up there. It is possible that we had a scale such that maybe a four thousand yard scale was being used at that time where it wouldn't appear. But normally we would have used a different scale. A ten-mile scale where it would.

* * * * *

(Tr., pp. 572 thru 575)

Q. Well, now you and the Officer in Tactical Command were operating a formation, were you not?

A. I was assisting him to do that, sir..

Q. And, well, he was running it?

A. Yes, sir; that is true.

Q. Obviously.

You testified yesterday that in order to avoid the danger of a vessel entering your screen or your formation area, the water occupied by your formation, your precautionary measures would have to be taken at an early stage; is that correct?

A. They would have to be taken earlier than if we were operating a single ship; yes, sir.

Q. And considerably earlier, would they not?

A. I would say considerably earlier. Yes, sir.

Q. Now Mr. Morehead, the C.I.C. officer on the FREMONT, in his deposition testified that such action would have had to have been taken considerably earlier than two minutes after two. Now at that time the tanker was outside of the screen formation, according to the plot which has been attached to the Government's answers to the interrogatories. Out in here somewhere (pointed to blackboard), somewhere in this position. Now do you agree with Mr. Moorehead's conclusion that action by your vessel or your formation to have done any good to relieve that danger of coming into the formation area would have to have been taken considerably earlier than two o two?

A. If I was to make a change of course to prevent the tanker from coming within the complete formation, that is, considering the screen as a part of the over-all formation; it would have to have been taken earlier than that, but I think as we discussed yesterday,

there are relative degrees of danger and I wouldn't be extremely concerned about the tanker or any stranger passing just inside the outermost screen, we'll say. My primary concern would be in keeping it clear of the main body of the formation.

Q. Now when you changed course or when your formation changed course from two seven o to two five seven, Mr. Moorehead testified that that placed your formation on a collision course with the tanker. Now, was it essential that you change course to two five seven at that very moment?

A. It was not essential; no, sir.

Q. And after you changed course to two five seven, was it essential for the accomplishment of your mission that you stayed exactly fourteen knots, or could you have slowed down without jeopardizing your mission?

A. We had previously established a time to arrive at the point of Camp Pendleton. Had we been late nothing serious would have happened. We were trying, of course, to make the schedule, as we always do, but had we been an hour or two hours late, three hours, it wouldn't have made any great deal of difference.

Q. Now you have testified, I believe yesterday, that you knew first of the presence of the RUCHAMKIN at the time of the collision; is that correct?

A. That is.

Q. You yourself?

A. Her presence right near the formation, I had an indication that she was somewhere in the vicinity when I learned of Captain Persons' message to Captain Day to the effect that he intended to open up the screen to admit the RUCHAMKIN.

Q. Now had you known the RUCHAMKIN, that the RUCHAMKIN was where she actually was, Captain Whiting, and that the WASHINGTON was where she actually was, would you have warned the RUCHAMKIN of the presence of the WASHINGTON?

A. I was not aware of any legal responsibility to do so, but I feel sure that I would have done so, sir, if there was an opportune moment to do it.

Q. Now at the Court of Inquiry, Captain Whiting, were you asked the question one seven two, Now, Commander Whiting, assuming if you had known that the RUCHAMKIN was on the starboard quarter, where it was, and that she didn't know about the CARTER HALL being absent —

Incidentally this question is being put to you by the Captain of the RUCHAMKIN, Commander Jackson, and that she had no reason to know of the present axis of the movement element formation, if you had, realizing these facts, and if you had known that the RUCHAMKIN was on the starboard quarter of the formation, and knowing of the WASHINGTON coming through, would you in that case have made any special effort to notify the RUCHAMKIN about movement of a strange ship?

The answer was, Yes, sir, notifying a ship in the screen or any ship such as the RUCHAMKIN was at that time, of another ship that might cause her trouble is an added precaution I think everyone will take if they were aware of the situation and think that some ship might give her trouble. I would say that I would have notified her, yes, if I thought that the merchant ship was going to come close at all.

Now at that time, Captain Whiting, you made no mention of legal responsibility. Now is that because of the difference in the proceedings that this is a civil trial that you have inserted that?

A. That is true, sir.

* * * * *

(Tr., pp. 579 thru 582)

Q. Now, Captain Whiting, I show you United States Coast and Geodetic Survey Chart 1222 and ask you if you would mark with a red pencil the location of Camp Pendleton on that chart.

A. It is roughly in here. Just south of Virginia Beach.

Q. Now is it labeled on that chart?

A. No, sir, it is not. Camp Pendleton is a military reservation inland from the beaches. We refer to the beaches as Camp Pendleton Beaches. The name Camp Pendleton, military reservation, which is just here.

Q. Now, Captain, looking carefully at this chart are you familiar with Virginia Beach?

A. In a general way, sir.

Q. Do you see a scale of miles, or can you arrange one by use of the latitude marks?

A. It is roughly one mile to an inch, sir.

Q. Could you then look closely at this chart and do you see there the road from Oceana into Virginia Beach?

A. Yes, sir.

Q. Now that comes in on 27th Street, does it not, at Virginia Beach?

A. I am not familiar, not that familiar with the streets, sir.

Q. You are not. Are you familiar with Roody Inlet, just south of Virginia Beach?

A. I know that it exists just south of Virginia Beach, sir.

Q. Are you familiar with Creatan Beach, a development just south of Roody Inlet?

A. I know about where it would be, sir. I am not familiar with it by name.

Q. It has also been referred to as Chatauqua By The Sea. That is the name of the ancient plat recorded about eighteen hundred. Does that ring a bell?

A. No, sir.

Q. Captain, are you sure that the area you have marked between those two red lines is not Creatan Beach which lies between Roody Inlet and Camp Pendleton, but is in fact Camp Pendleton?

A. I am not sure at all of this, sir. I would have to have a better map.

Q. Then you can't tell from your own experience whether Camp Pendleton is in fact shown on that chart?

A. This is not in sufficient detail to outline Camp Pendleton. However, I see now the road that is taken to Camp Pendleton when coming along, I believe.

Q. Atlantic Avenue, Virginia Beach?

A. Yes, sir; right down here, up here and Camp Pendleton is probably off the chart, right in here—is a new steel pier. (Marked on chart.) I would say that.

Q. Could you mark that with an "A"?

A. Right here (marked). Just above in that position is a new steel pier that has been constructed within the last six months. This looks like Lake Christine right here. If that is Lake Christine, then Camp

Pendleton would start almost at the bottom of this chart right there, sir.

Q. And stands in a southerly direction?

A. That's right, sir.

Q. And you are the Chief Staff Officer of the group, Commander of the Task Forces of Operation Seascape; is that correct?

A. I was, sir.

Q. You were at that time.

MR. CRENSHAW: That is all.

I would like to offer the chart into evidence.

MR. MCGOVERN: No objection.

THE COURT: Let it be admitted.

THE CLERK: Texas Defendant's No. 10.

(The Clerk so marked the chart as Texas Defendant's Exhibit No. 10 in evidence.)

* * * * *

Statement re deposition of JAMES UPTON.

(Tr., pp. 584 & 585)

I would like to ask you, however, two questions. One, do you know of any warning that was given to foreign shipping of Operation Seascape?

A. By foreign shipping, do you mean outside of the United States Navy?

Q. Yes, sir; foreign flag vessels; for instance, Greek, Panamanian, Swede.

A. I am not sure that the Notice to Mariners was diseminated to them, sir.

Q. That would be the only one?

A. So far as I know that would be the only one, sir.

* * * * *

(Tr., pp. 587 thru 589)

Mr. Fletcher has pointed out to me that we have one of these witnesses who is bound in with another.

THE CLERK: No, it isn't. I just discovered it is three separate volumes.

MR. MCGOVERN: I will just offer the two volumes of Nelson. Nelson went on for two days.

Then, Your Honor, we have a stipulation under which, that is Upton, the lookout on the tanker, could not be produced, we would introduce his Coast Guard testimony and I understand —

MR. BRUSH: May I make a statement to the Court about Upton? Following our conference here in connection with the motions, I communicated with his attorney, Mr. Denbeigh, by registered mail, and explained that we required Mr. Upton's attendance at the trial, or in lieu thereof, that we wanted to take his testimony by deposition. Mr. Upton apparently frequents the Seamen's Institutes and flophouses in New York and his attorney would not give me his current address. I have had people out trying to serve a subpoena on him and we have a subpoena in the hands of the Marshal, when we locate him—and then, the attorney on one occasion told me that he would appear with Mr. Upton, accompany him, if we would pay the attorney a per diem, and we asked the attorney how much he wanted, and then he apparently changed his mind and said he would not come but that he would produce Mr. Upton in connection with his personal injury suit and injury trial. Until the present moment we have not been able to locate the man at any of the sailors' places up there and I have an investigator out trying to find him, but, of course, because of the nature

of his abode, why it is very difficult to find him unless you know him. I don't have a photograph of him. I have seen him personally, of course, and we have examined him before trial, but it hasn't been possible to get —

THE COURT: What was his position on the WASHINGTON?

MR. BRUSH: He was the lookout and Your Honor will recall that he filed a suit against the Texas Company and that suit is pending, but was on the consolidated, with this trial for trial.

THE COURT: Well, in his absence you are going to introduce the deposition?

MR. MCGOVERN: His Coast Guard testimony.

THE COURT: That is agreeable?

MR. BRUSH: That is agreeable.

THE COURT: All right. Let it be admitted.

MR. MCGOVERN: Your Honor, introducing this, I don't want to adopt Upton's statement that he was injured. I don't believe that is required.

MR. BRUSH: Oh, no.

MR. MCGOVERN: No.

THE COURT: All right.

MR. MCGOVERN: Upton's Coast Guard testimony. I think we had better have that marked with a Government exhibit number.

THE CLERK: Government's Exhibit No. 25.

(The Clerk so marked the Coast Guard testimony of Upton as Government's Exhibit No. 25 in evidence.)

MR. MCGOVERN: Then there was a similar —

MR. BRUSH: Just a minute. In connection with Mr. Upton and not for the purpose of confirming any injury at all, I can tell Your Honor that we never were able to get a statement from Mr. Upton so that the *Coast Guard testimony plus my examination of him* before trial which was simply in connection with his injury matter were the only statements that we got. We do, however, have a personal injury report, so-called, that was taken by the master of the WASHINGTON and in the interest of everything there, I thought I would be glad to produce that, if it is relevant or important. These were taken on the day of the collision apparently and it is the only so-called company statement of Upton we have.

MR. MCGOVERN: Would it be agreeable on mine —I will offer it and then we will have it together, actually; this part of the case is a statement of how the accident happened

THE COURT: Attach it to his Coast Guard testimony.

* * * * *

COMMODORE OSCAR SMITH, an expert witness, called by The Texas Company * * *.

(Tr. p..605)

DIRECT EXAMINATION

(Tr., pp. 607 thru 614)

Q. Now you say you graduated in 1908 from the Naval Academy?

A. Yes, sir.

Q. When did you retire, Commodore?

A. June 1st, 1947.

Q. When you first entered the Navy, was the Navy using screens at that time?

A. No.

Q. Are you familiar with the development of the screen as a part of a formation and a naval formation?

A. I am thoroughly familiar with it.

Q. Now would you explain or narrate briefly your experience with these screen formations, Commodore.

A. In telling my own experience regarding screens, I must add and include with it excerpts of the history of the development of the screen because they are intertwined.

As I testified before World War I if screens were used at all, I knew nothing of it. They could not have been very large anyhow because they didn't have sufficient screening vessels in the Navy during World War I. The German policy of unlimited submarine attacks and the necessity of carrying on extensive convoy work brought the adoption of screens as a protective measure and the individual commanders who were directly charged with a convoy escorting work developed their own methods regarding screens. These were hit and miss, but they did some development work under the pressure of war. When World War I ended, the officers of the Navy in their exercises began to think and use screens, and this period lasted when each individual commander, given the problem, would devise his own method of handling the Tactical Command that he took over. I should say that period lasted up until about 1931—1921 to 1931. During that time I had very limited experience with this, only spending two years in the battle fleet on the battleships, and my

experience was solely with the main body and from the main body screening looks very simple.

During the latter part of that period, then around 1928, '29, enough officers, senior officers had realized the importance of screening. New destroyers, fast ones, were coming out, new submarines, and the various cruiser types, and they had to protect themselves. Any formation had to protect itself and they saw this was coming in the next war.

So the senior, certain senior officers began to take extra interest in it. One of these who I think at that time had been Chief of Staff of the Atlantic Fleet had written so much about it and had shown such great interest that I believe that was the major reason for his detail in the Naval War College. From that I had the great fortune to be ordered to the Naval War College in 1932, 1933, when this officer was president of the War College, and during the previous two years the War College had spent its time under the urging of the President, among other important items enveloping screens and the tactics they should employ and the command responsibilities and the methods of control, everything connected with them from the theoretical standpoint, working them out to the maneuvering board. That is an excellent way in which to learn that art.

When I was at the War College during that year, in addition to learning this, I had another fortuitous circumstance. I was in the, what they call the big problem at the College, which is the last one before you graduate, a war problem, and it follows a number of minor ones, and about five major problems, in which all students take part, but in this big problem, which

contemplated war between Japan and the United States, about two weeks after the operations started on the maneuvering board, the Commander in Chief for whom I was acting at that time as Chief of Staff, Commander in Chief of the Forces representing the Japanese Navy—this officer was detached, had been made an admiral, and even though I was only a commander, I was detailed to carry on as Commander in Chief of the Forces representing the Japanese Navy. Part of that good fortune was that the opponent who commanded the forces representing the United States Navy was infinitely superior to me in both rank and sea experience. He was Admiral Ernest J. King who later became Commander in Chief of the United States Fleet and Chief of Naval Operations during the year.

I also had to help out my own experience that time, my scouting commander, the man under my command, the scouting commander, Admiral William F. Halsey, who is not unknown for the part he took in the war. When I left the War College, as we all did, not with a graduation certificate, because they do not give them, but with the diploma which says you have satisfactorily completed the course, I then accompanied the President of the War College who went to sea at the same time as Commander, Heavy Cruisers, and became his Operations Officer.

Q. Was this officer the same officer that had shown the interest in the development of the screen?

A. This was the same officer, Admiral Harris Laning. He, for two years, as Commander, Cruiser Scouting Force, had wonderful opportunities and he took them to try out practically the principles which he had developed theoretically at the War College.

There were innumerable smaller exercises, more grandiose ones, and each year one fleet problem. In all of these he bore, he and his force bore a very prominent part and whenever the Admiral bore the prominent part, I was the working member of the firm, drawing up the operations orders, conferring with his senior commanders, commanders junior to him, and when we were at sea, if he had a command or unit, I was what you might call the permanent staff duty officer. There would be a staff duty officer who is there intermittently, and if the Admiral was not on the bridge, and if there was any likelihood of anything going on, I was on the bridge. I was that way and had gained tremendous experience and took over this rather broad duty because the Chief of Staff of our forces preferred and took over the administrative duties while leaving the operational ones to me.

I would like to make clear that during that period of two years, he acted as Commander in Chief of a fleet in war problem and I was his Operations Officer. He acted as Commander of the main body in certain movements, he acted as Commander of supporting cruisers ready to protect the screen in case of penetration, he acted as Task Commander in charge of screens or portions and the different kinds of portions of screen, because when they are large, they often will break the command up under subordinate commander into sections, and at times we traveled as a, merely a single ship some place in the disposition.

Q. Over how many years did this experience with Admiral Laning cover, Commodore?

A. Three years from the start to the—three years starting from the War College to when I left him, and when I left him, he was then Commander, Battle

Force, and I was Operations Officer, Battle Force, and not with the cruisers.

Q. During those three years and your experience at the War College, were you taking part in the development of the precedents which governed the operation of these screens and the responsibilities of the various members of these formations?

A. During this period not only we, but also the Commander in Chief of the United States Fleet was taking a personal interest in it, and that is exactly what they were trying to do; develop principles and standards of procedure which would enable screen formations to carry out their duties efficiently.

Q. Now, Commodore, in your naval experience from that time down to your retirement in 1947 were the precedents and principles about which you have just spoken, were they substantially changed, sir?

A. I had opportunity to note that practically the answer to that and I would like to give it in a little detail, but I will make it short.

In 1935 I went ashore at the Naval Academy and in 1938 I took command of the HONOLULU which was the light cruiser and the commander of light cruisers flew his flag from my ship, and that ship being a light cruiser, was operating in screens very frequently. The procedures then used, this being three years later than when I had left, were very similar to that which we had established by 1935. There were minor changes, but the basic principles remained the same.

Then I was two years with the HONOLULU and left in 1940, July, to become Director of War Plans, and seven days after I reported—I am inserting this personal item because it deals with my later ob-

servation of the unchanged precepts to which the question referred—seven days later I unfortunately had a coronary thrombosis attack and from which I apparently recovered, but I had great difficulty in remaining on the active list. However, I did remain on the active list during the war, and in during the war, I went on as an observer, not in command, on the amphibious attack on the Palau Islands, being an observer and having been tremendously interested in screens, I took advantage of my time to, among other things, note what the screening procedures were as well as attack procedures. And again, I found though they were changed due to the increased numbers of ships which was far beyond anything I had ever seen, actually the method, the basic principles remained unchanged.

Q. And did that observation remain the same through June, until June of 1947, at the time you retired, Commodore?

A. Yes, shortly after I returned from the Pacific, I went on, became Chief of Staff, Atlantic Fleet, and that carried up until I retired, and there I had opportunity to observe and talk with the people who had been running the screen procedures in the Atlantic and they were unchanged at that time.

Q. Would the principles that you experienced and that you helped to develop, were they any different because the formation happened to be on an amphibious mission than they would be with light cruisers?

A. The basic principles remain unchanged, whether the formation is on an amphibious mission or is cargo convoy-escorted by naval ships, or if it's any formation of say two or more naval vessels.

Q. During this experience did you have opportunity to operate in peacetime at nighttime with normal navigation lights burning?

A. Yes.

* * * * *

(Tr., pp. 622 & 623)

Q. Now do the various officers, to wit, the Commanding Officers of the joining vessel and the two superior officers, are they aware of this change of status, or should they be aware of that change of status?

A. Yes, they should be. Yes, they should be.

Q. Is it important in the Navy that a change in command or tactical command status is recognized clearly by the officers involved?

A. It is vitally important and it is so important that it is one of the things in which all naval officers are indoctrinated repeatedly in their—and they are indoctrinated by custom and, for example, an officer who receives orders transferring him from one ship to another, follows the customary phraseology; detached, meaning detached from the command of this officer on this, such-and-such a ship, proceeds, which in short means proceed independently under your own Tactical Command, if you wish to paraphrase it; report, to some Commanding Officer, and until the moment when he hands those orders in to that officer's representative, he is on his own. When he releases the papers, he is under the command of that man and he can give him orders. The same way with a ship.

Q. Now, Commodore, while the RUCHAMKIN is on this independent mission off Camp Pendleton, would you expect the flagship, the FREMONT, to be interested in her whereabouts?

A. The flagship as O.T.C., casually so because the ship was eventually going to join his formation, but until the work, whatever the RUCHAMKIN was doing, until he had finished that work, his would be merely a casual interest, but the Group Commander, and I understand the FREMONT was flagship of the same man who is Group Commander, he has an interest in that, a great interest, because this ship is doing something which he directed it to do. He wants to know when it is finished and he wants to know what it is doing right up until the time when it rejoins the Tactical Command.

* * * * *

(Tr., pp. 628 & 629)

Q. Now, Commodore, if a vessel approached, as we are told the WASHINGTON did, from up in here and the RUCHAMKIN approached the formation from back in there, as we are told, would it be fair to say that the lights of the merchantman would be merged or confused with the lights of the formation as viewed from the RUCHAMKIN? Would it be easy, or would it be probable that the RUCHAMKIN back in here would see the lights of the WASHINGTON across the formation?

A. Certainly, if the main body was on line in between the two ships her lights would utterly—the lights of the RUCHAMKIN from the WASHINGTON, and the lights of the WASHINGTON from the RUCHAMKIN would be merged, confused, or blotted out.

Q. And would the O.T.C. and the Screen Commander be expected to know that?

A. Yes.

Q. Would a glance at their plot tell them that?

A. If they were in those positions, qualified as I said, that she was on a line between them.

* * * * *

(Tr., pp. 630, 631, 632)

Now the last pargraph, the last question that I asked before the break was if you would describe command responsibility as you deem it to exist with respect to the O.T.C., the Screen Commander and the Commanding Officer of the individual vessel.

A. The O.T.C.—will you repeat the officers?

Q. The O.T.C., the Screen Commander, the Commanding Officers of the individual vessels.

A. The O.T.C. has the supreme command over a formation. Command, that is, Tactical Command; Tactical Command means that he has been granted the authority to use the forces under his command in operations. Therefore, he holds tactical control of the entire formation and all the ships in it. Command gives him such wide authority and such complete authority that with it goes responsibility. He cannot take the command over those forces without holding himself responsible for them. I previously mentioned his responsibility to his superiors to carry out his assigned tasks, and I have previously mentioned his responsibility over those he commanded, to safeguard them, and I would like in answering your question to include a little bit of what this responsibility brings to him in the way of necessary action occasionally.

It involves the primary act of keeping track of every ship in the formation. Not only does he keep that track but the commanders underneath him must keep that track so that they will know where each ship

in the formation is at all times or roughly at all times. But it isn't a running track. It's an intermittent, every ten minutes you take the ships or every five minutes, whichever you regard necessary or maybe every half hour, but it must be taken at such intervals so you know where they are and what they are doing.

Now the Screen Commander has been delegated Tactical Command of the screen by the Officer in Tactical Command. That gives him full command over the screen and full tactical control of them after they come under his command. The individual ships of the Command have their own ships and they use them to carry out their orders just as the Screen Commander uses the ships that are entrusted to him to carry out his orders and just as the Officer in Tactical Command uses the formation to carry out his order, and in so doing, the Commanding Officer of the ship has the responsibility to do this so that all the men under his command are safeguarded, so that the ship may merge in the operation ready for the next operation or the next task assigned. That about covers their responsibility to each other.

Q. Now, Commodore, you have spoken there of the responsibility of the O.T.C. to the vessel in the formation. Now in this particular case we have a screening ship, the RUCHAMKIN, which has—is not on station, but has been directed by the Screen Commander to proceed to a position from which to take her station. Now what sort of a status would she be in?

A. She's under command of the Screen Commander. She's in the status, because she has reported to him and he has given her an order, therefore, she's

in the status of a ship of the screen that is not in position or as they term it in the Navy, ship out of position.

Q. A ship out of position. And you have said that she's also under the Tactical Command of the O.T.C. at the same time?

A. She's under the Tactical Command of the O.T.C. because she's reported to the officer to whom he has delegated the command and that officer has received her as part of his command.

* * * * *

(Tr., p. 642)

Q. That was the next question I was going to ask you. Now in this business of naval responsibility, let me see, you were once the Chief of Staff of the Atlantic Fleet?

A. Yes, sir.

Q. You were responsible as a naval master for a great number of details and ships of which you had no personal knowledge; is that correct?

A. Yes.

Q. Is that customary in Navy responsibility?

A. Oh, yes. When you get high up.

* * * * *

(Tr., pp. 646, 647, 648)

Q. I believe the paragraph that your counsel was referring to is the one which is "n", 4n, and it reads, When under the tactical command of a senior, promptly give notice to such senior and to the ship or aircraft endangered if he finds that the directed course is leading his ship or aircraft or any other ship or aircraft into danger.

A. Yes.

Q. Now that has, as I understand it, three conditions; the first condition is when under the tactical command of a senior.

A. Yes.

Q. Now does that mean any senior officer senior to it or just any tactical command?

A. No, it means any tactical commander whom he is actually serving under at the time.

Q. Promptly give notice to such senior. Now that means to the Tactical Command?

A. Yes.

Q. And to the ship?

A. Well—

Q. Yes?

A. No. Repeat that.

Q. Promptly give notice to such senior. The paragraph doesn't repeat senior officer in command. It just says such senior.

A. It is broader than that. My answer, the first one was right because frequently you are speaking of—there may be a senior and may not be called the Tactical Commander. He may actually have the power of a Tactical Commander, but he may not be the Tactical Commander at that moment, and I—you cannot, when you get into points of that nature, differentiate from the man who has the power to take over tactical control at any moment, so when it says a senior, if such a man were around as well as the Tactical Commander, he should, that would cover him, he should report to him or any senior, and you cannot add the words "only the tactical ones".

Q. I see.

A. Only the ones under whom he actually is tactically operating at that moment, I mean.

Do I make myself clear?

Q. I understand it. It's the duty to promptly give notice to a senior of a danger, is a duty which is owed even though the senior is not the Officer in Tactical Command of the group under which—

A. It might be so construed. If he thought that would be the best man to give it to—in other words, that would give him authority to give it to that man. He would give it to the man, one that he'd get the quickest action out of he should give—

* * * * *

JOHN D. CAIN, Master of the SS WASHINGTON, a witness called by The Texas Company * * *. (Tr., p. 656)

DIRECT EXAMINATION

(Tr., pp. 657, 658, 659)

Q. How long have you been employed by the Texas Company?

A. About twenty-six years.

Q. Since you have been going to sea what has been your sea experience?

A. Well, about twenty-five years of that time with the Texas Company it's been as a licensed officer.

Q. And during that period have you sailed around the world or at various parts in the world?

A. I have sailed at various points. I have never been to all the places in the world.

Q. How much of that time have you spent traveling up and down the Atlantic Coast?

A. I couldn't say for sure. I'd estimate at least half of that time, though.

Q. In November, 1952, were you master of the tanker WASHINGTON?

A. I was.

Q. Will you describe the WASHINGTON in a general way, the type of vessel she was, her approximate length, and so forth.

A. Well, she's regular T-2 type tanker, was built by the Government during the World War II. Her over-all length is five hundred twenty-three and a half feet. She is some ten thousand, little better than ten thousand tons, gross tonnage.

Q. Were you master of the WASHINGTON on the night of November 13-14, when she had the collision with the USS RUCHAMKIN?

A. I was.

Q. At that time was the WASHINGTON light or loaded?

A. She was loaded.

Q. What port had she left before the collision?

A. We sailed from Atreco; that is a little oil terminal, belonged to the Atlantic Refining Company on the lower part of the Neches River. We sailed from Atreco about noon on the 9th of November, 1952.

Q. And where was the WASHINGTON bound?

A. We were bound to the Atlantic Refining docks in Philadelphia.

Q. In the course of that voyage would she have put into any port before she reached Philadelphia?

A. No, sir.

Q. Now at the time the WASHINGTON set out on this voyage was there in force and effect on the vessel a certificate of inspection issued by the United States Coast Guard?

A. Yes, there was.

* * * * *

(Tr., pp. 660 & 661)

Q. In proceeding on the voyage from the Gulf up to Philadelphia, will you give us a general idea of the course or route that the WASHINGTON followed?

A. Well, we took departure from Sabine Bar there and came on out until we got out into deep water, past East End Buoy and headed for Tortugas, thence around the Florida reefs there, and up the Gulfstream to Diamond Shoal, passed about eight miles east of Diamond Shoals and from there we set a course by target, lies about forty miles north and slightly east of Diamond Shoal on up to Fenwick Shoals Buoy and thence into the mouth of the Delaware.

Q. Have you been on vessels other than the WASHINGTON and also on the WASHINGTON when the vessels have made voyages up the Coast towards Philadelphia?

A. Yes, sir; many times.

Q. Was the course that the WASHINGTON followed on this night in a general way the same general course that vessels follow on which you have been?

A. It was.

* * * * *

(Tr., p. 662)

Q. How many deck officers were in her complement at that time?

A. We had three regular deck officers and we had one observing third mate that was temporarily assigned there until he could be placed somewhere. He held a master's unlimited license, besides myself.

Q. Excuse me. Will you give us the names of the deck officers on the day of this collision?

A. Well, the Chief Mate was Mr. S. H. Reid. The Second Mate was Mr. O. F. Riche. The Third Mate was Mr. S. C. Williams and the observing Third Mate, I can't recall his name.

Q. And about how many seamen did she have in the deck force?

A. Well, they have three quartermasters, three able seamen, three ordinary seamen, in addition to the day men that done maintenance work.

Q. Now in addition to this deck personnel, did you also have engineer personnel?

A. Yes, sir; we did.

* * * * *

(Tr., pp. 665, 666, 667)

Q. Will you describe the screen arrangement of the bridge of the WASHINGTON as it existed on this night? What did it consist of? Was there an enclosed area and open area?

A. Well, in the center of it, I'd say about one-third of the width of the ship, was taken up by wheelhouse, pilothouse, and on each side about one-third was open bridge.

Q. Were there any openings in the forward part or the side of the wheelhouse? If so, tell us what they were.

A. They are large portholes. I couldn't say the exact size but they are tremendous, probably that much diameter (Indicated.)

Q. How many are there in the forward bulkhead of the pilothouse?

A. Three, I believe.

Q. Are there any on the sides of it?

A. Yes, sir; there's portholes on the sides and also a door on each side leading out to the open bridge.

Q. How many portholes are on each side?

A. I believe there's one on each side right abaft the door that leads out to the open bridge.

Q. In this pilothouse of the WASHINGTON as it existed on this night, what machinery or equipment was there for steering and/or any indicator, or anything like that? Would you please tell us in a general way what you had on board.

A. Well, there is on the starboard side of the wheelhouse up forward part, there is an engine room telegraph for controlling the speed of the ship, and on the port side there there is a docking telegraph, and up on the bulkhead on the forward side above the portholes, there is a rudder indicator and also a revolution indicator up there to indicate which way the engines turning and how many revolutions.

Q. Where was the steering wheel located with reference to the forward bulkhead?

A. Well, it is situated far enough back that there is a very comfortable, wide walkway forward to the wheelhouse, across the wheelhouse.

* * * * *

CROSS-EXAMINATION

(Tr., p. 683)

Q. Well, tell me how your ship got back from o two three to zero zero nine. Did he say back or did he turn back or —

A. Well, I wasn't up there at the time.

Q. No, but you are captain of the ship.

A. That's right.

* * * * *

(Tr., pp. 684 & 685)

Q. Now getting back to your night order book, the one for this particular occasion. You have a sentence here that says, keep a sharp watch for cross traffic and fishing vessels. Now where would the cross traffic have been going that you were referring to?

A. I expected as it is usual there to find that normal traffic in and out of the Chesapeake. They go to Baltimore, Norfolk, Newport News and up and down there, and the traffic is normally pretty heavy in and out of there, the ships coming and going. That is what I expected.

Q. You are referring to the cross traffic of the light ships?

A. That is right; in and out of the Chesapeake.

Q. That's right. Now what fishing vessels did you expect to find there?

A. Well, there's trawlers that operate up and down that Coast in those certain areas. They are up and down there wherever they find fish.

Q. What kind of trawlers, menhaden?

A. I don't know what they catch. They catch scallop, menhaden. I never was on one of them. I don't know what all they do catch.

Q. Oh, you weren't looking for a particular fishing fleet like the menhaden boats or the mackerel boats?

A. I didn't know where we would encounter fishing boats; you encounter them all up and down that Coast there as the sounding water.

* * * * *

(Tr., pp. 691 & 692)

Q. Now what were the actions of Mr. Riche which led you to believe that he needed a sedative?

A. Well, there were no actions there, but I imagine most anybody gets involved in something like that, their nerves would be quite upset.

Q. What kind of a dose of phenobarbital did you give him?

A. Just one tablet.

Q. How many grains?

A. I couldn't say how many grains there are in it.

Q. Where did you get it from?

A. We have it in the medicine chest.

Q. Did you give him this phenobarbital before the Navy boarding party came aboard?

A. No, sir; it was after that; pretty sure of that.

* * * * *

(Tr., pp. 716 thru 719)

Q. Carrying this point further, about being properly manned, Captain, I ask you if you had an ordinary seaman on board your vessel and assume that he had, did he, seeing out of one eye, and this man was put on a lookout position, would you state that your ship was properly manner with such an individual as a lookout?

MR. BRUSH: I object to that as calling for a a conclusion. It is a matter of law for the Court to decide.

THE COURT: I think so. Suppose you prove what the facts are. Then you can argue that it is not a proper manning of the vessel.

MR. O'CONNELL: May I have Upton's physical —

THE COURT: Are you hunting for testimony in the deposition?

MR. MCGOVERN: Dr. Cooper's 35—25.

THE COURT: If it's in there, I say it is something that you can argue from. I do not see any reason to bring it up now.

BY MR. O'CONNELL:

Q. If I was to tell you, Captain, that in the evidence in this case there is a report from the Marine Hospital that your lookout, James A. Upton, was blind in his right eye, and knowing that fact, would you then state that the SS WASHINGTON was properly manned?

MR. BRUSH: Now, if the Court please, I would like to repeat my objection, and in that connection I would alo like to state that medical testimony has been taken, testimony of the physician who made that report in the Marine Hospital, and further I will argue that it does not establish what Mr. O'Connell now says it establishes, and further, I would like to call the attention of the Court to the Section 10.02—9, f in parenthesis, 5 in parenthesis, of the Rules and Regulations for Licensing and Certificating Merchant Marine Personnel, issued by the United States Coast Guard, and that section which relates to examination of seamen, especially AB seamen, states specifically nothing herein contained shall debar an applicant who has lost the sight of one eye from securing a renewal of his license provided he is qualified in all other respects and the vision in his one eye passes the test required for the better eye of an applicant possessed of both eyes—so that I don't see how the Captain is in a position, if the

Coard Guard did not feel that way, that the ship is not properly manned —

THE COURT: Well, I think the question's objectionableness in asking the Captain's opinion — you can prove what the facts are and as I indicated a minute ago, argue to the Court that that shows an incompetency in the lookout, if you think it does show. I do not think you can ask the Captain what he thinks about it. You can ask him what his knowledge is of it, or anything showing a factual situation from which you want to make an argument.

MR. O'CONNELL: Your Honor, I am trying to show that the Captain is in charge of the vessel, has previously stated it is his opinion that it was properly manned. I am just trying to rebut that statement of the Captain.

THE COURT: I do not think you can ask him his opinion as to whether the defect in this man's eye would constitute an inadequacy in the manning of the vessel. That is a matter of opinion.

* * * * *

LEONEL J. FORTIER, radio operator, SS WASHINGTON, a witness called by The Texas Company * * *

(Tr., p. 722)

CROSS-EXAMINATION

(Tr., pp. 730, 731, 732)

Q. Now, Mr. Foitier, you talked about company message. Was there any schedule on which the company would send messages to Texas?

A. No, sir; they might come in any time.

Q. How would you know they were calling for you, if you were off watch?

A. If I were off watch?

Q. Yes.

A. Well, I wouldn't know.

Q. I see. Well, now how would they know when they could get you? Suppose they wanted to get you and they couldn't raise you; what would they do?

A. Well, the company normally expects you to stand watch during the daytime and maybe a few hours after dinner because they may send messages after five o'clock, as they leave the office, and by the time they file and get the company stations, it's usually, gets there by six or seven, and by seven o'clock or thereabouts, if an operator has heard all the traffic lists and the various commercial stations, and there has no message been on any list, well, that's it. You can go to bed.

Q. Let me ask you another question. How does the company work you? From what station do they work your station?

A. They—I was going to say it depends a little bit on where the ship is.

Q. Oh, they—this trip like you were here from the Gulf up to Delaware Bay?

A. Oh, you may be—the WASHINGTON's trip?

Q. That's right.

A. Well, they normally work me, send a message either from Lake Worth, Florida, or possibly Savannah, Georgia, or possibly Tuckerton, New Jersey, or maybe direct from New York. With New York, I wouldn't know. It just, sometimes they come in from one system, that is, Mackey Radio and RCA and the

messages sometimes come in through Mackey, so you have to watch them a little.

* / * * * *

E. BRADFORD TAZEWELL, JR., model builder, a witness called by The Texas Company * * *.

(Tr., p. 733)

DIRECT EXAMINATION

(Tr., pp. 736 thru 739)

Q. Now on this model would the bridge of the WASHINGTON or the position of the eye of the viewer be at any particular place, Mr. Tazewell?

A. Yes, I made calculations allowing for the heighth of the bridge of the WASHINGTON and the heighth of a man on the bridge, it being, I believe, forty-five feet.

Q. Now did you even take into consideration the curvature of the earth?

A. Yes, sir; I did.

Q. Did that have any effect on your problem?

A. Theoretically it should be taken into consideration. Upon investigating this I found that the effect was negligible.

Q. Now as to this frame here, is there some position on that frame at which the eye of the viewer should be located?

A. Yes, sir; where the small pin is located.

Q. That would be right here, would it not?

A. Yes, sir.

Q. Mr. Tazewell, do you produce a pamphlet or a brochure explaining what you have done?

A. Yes, sir; I did.

Q. Is that a copy of it that —

A. Yes, sir. Having determined that scale of all the various ships in this formation, I drew a schematic plan of the ships. Mind you, it is not an accurate plan, but it only shows to this scale the length of it and width of the ships. I located the lights and then I calculated the angle between the line of sight from the WASHINGTON and the axis of the ships itself.

(Handed to the Court.)

This having been determined I could draw an accurate, you might call, elevation of the ship from this angle. This gave me the appearance, the location of the lights at fifteen hundred yards. Now, of course, all the ships weren't at a range of fifteen hundred yards from the WASHINGTON and they had to be altered accordingly. Now the appearance would be a simple mathematical proportion so I altered the appearance of these lights and their relative distance from each other and from the water line of the ship according to the range of each of the ships.

Q. Now, Mr. Tazewell, in order to determine the angle between the axis of the naval vessel or the heading of the naval vessel and the line of sight of someone aboard the WASHINGTON, you would have to know the courses of the ships involved, would you not?

A. Yes, I do.

Q. What course have you used for the two ships or for the group of ships?

A. Well, at any particular time the course of the WASHINGTON makes no difference. However, the course of the Navy ships, I used two hundred fifty-seven degrees for the first two illustrations and the third one is a theoretical illustration. I used two hundred and seventy degrees.

Q. Now, Mr. Tazewell, what sort—you said that this is a mathematical process—is it simply an application of mathematical processes to take that information and results in this display?

A. Yes, sir.

* * * * *

(Tr., pp. 745, 746, 747)

BY MR. CRENSHAW:

Q. Mr. Tazewell, you have placed two boards, two cardboard pieces in here with paper clips or clips at the top and little dots of light. Now as I have indicated these are marked on the back zero one five five.

A. Yes, sir.

Q. What, Mr. Tazewell, would this represent then as it stands at this moment?

A. That would represent the location of the lights on the ships in the naval formation as viewed from the bridge of the WASHINGTON at a time of one five five. In other words, it is a simple mathematical location of it, these lights from a point on the bridge of the WASHINGTON.

Q. Now I notice that some of these dots are larger than others of the dots. Why is that, Mr. Tazewell?

A. That is to give an indication of the relative distance of the various ships, some of them being closer than others.

Q. Have you attempted here, however, to plot a light which would appear, which would accurately represent the appearance of a light in brilliance at any particular given range?

A. No, sir; that would be impossible in any medium.

Q. So that you have merely made the lights smaller or larger as their respective distances would be and they have been accurately positioned?

A. Yes, sir.

Q. Now is the same situation true with the other two exhibits, the one at zero two zero two, when the WASHINGTON, when the naval vessels were on two five seven and the hypothetical exhibit, which would be in the event that the naval vessels had remained on two seven o?

A. Yes, sir.

Q. Now we have moved, if Your Honor please, to a point where we would like to have either—use the exhibit or bring on testimony. In other words, we now have the exhibit Stage 1 setup. We would like to have the Court view this; if Mr. McGovern wants to cross-examine before the Court views it, it is perfectly all right, but we have the first stage set up now for view. We will do exactly the same thing to produce the second stage which is the same situation only some seven minutes later.

THE COURT: Well, my thought was to get all the testimony in that is necessary and then I would view it. Either put it in Chambers or put it in the jury room, or somewhere where you will all be present and then we could get the court reporter in a position to hear it better.

MR. CRENSHAW: Fine.

THE COURT: So suppose you; Mr. McGovern, do you want to cross-examine this witness up to this point, or —

MR. MCGOVERN: Your Honor, there is absolutely nothing on which I can cross-examine this witness up to this point.

* * * * *

(Tr., pp. 775, 776, 777)

PROCEEDINGS

(In Chambers)

THE COURT: What testimony did you want to take this morning in here; anything other than —

MR. CRENSHAW: There is one thing we didn't cover in getting—there are three boardss, three sets here. We have covered two of them. We haven't covered the third. It will take just a couple of minutes to have Mr. Tazewell explain what he did for the third. I suppose we should do that probably before they are viewed.

THE COURT: All right.

Thereupon, E. BRADFORD TAZEWELL, JR. having been previously duly sworn, testified further as follows:

BY MR. CRENSHAW:

Q. We could have him —

A. As Mr. Crenshaw mentioned, the first two times I believe, first two displays, rather, already touched on yesterday as being the location, lights at o one five five and o two o two. The second display represents the actual occurrence or the actual appearance, location, rather, at two o two, the Navy being on a course of two five seven.

The third display represents what the naval ships' lights, or where they would have been located had the Navy remained on their course of two seven o.

Q. In that connection, Mr. Tazewell, would that third situation be representative, if the WASHINGTON did what she in fact did do, but the Navy had instead of at zero one five o, instead of changing course to two five seven, had continued on two seven o?

A. Yes, sir.

Q. How, Mr. Tazewell, did you arrive at the positions, respective positions of the vessels for this third or hypothetical situation?

A. By plotting it on a maneuvering board and also made allowance for the slight error in plotted position and actual position and assumed that the error would be similar in this case.

Q. Now you speak of an error between plotted position and actual position. By that do you mean, could you explain that a little bit? Did you compare, did you have a previous actual position and a previous plotted position to compare one another with?

A. Yes, sir.

Q. Now were they based on the two five seven situation?

A. Yes, sir.

Q. In other words, did you plot from a given time such as one-fifty up to two o two?

A. Yes, sir; was based on one-fifty.

Q. And then was the first thing you take a true or perfect situation on the maneuvering board for the situation where the Navy was on course two five seven and then plot that for a given number of minutes and get a position where they should have been at two o two similar to dead reckoning?

A. Yes, sir.

Q. Then by vision of the radar plat did you see that that position at two o seven was slightly different from your dead reckoning position?

A. Yes, sir; it was several hundred yards to the southeast, actually. I have forgotten the exact amount.

Q. Did you go through a similar procedure for the hypothetical, if the Navy had been at two o seven?

A. Yes, sir; I did.

Q. Did you similarly offset that DRT, or dead reckoning position by the southeasterly error?

A. Yes, sir.

Q. All of the other aspects of the third display are the same as the first two then, are they not?

A. Yes, sir. It is a purely mechanical and mathematical procedure.

* * * * *

OLIVER FRANCIS RICHIE, mate on watch, SS. WASHINGTON, a witness called by The Texas Company * * *.

(Tr., p. 750)

CROSS-EXAMINATION

(Tr., p. 804)

Q. Well, now, those are the only two physical examination records with which your counsel have provided me. Do you have any other physical examinations conducted by the company?

A. Not conducted by the company, but I had never been sick while working for the Texas Company, and they had no reason to call for a physical examination for themselves, but every six months I have on record in my home town and also in New Orleans where I have been taking examinations and changing

my glasses and getting a thorough physical examination.

Q. Now you are wearing glasses now?

A. Yes, sir.

Q. When the last medical examination you had before November, 1952?

A. Before November, 1952,—well, I went on the WASHINGTON about August of 1952 and I had, I was on a vacation preceding that, and I had my own physical examination then. I had my own doctor and went through his office and got a physical examination, and concerning some X-ray pictures of my feet and everything else.

Q. What was this doctor's name?

A. Dr. Willoughby.

Q. Where is his office?

A. Groves, Texas.

* * * * *

(Tr., p. 806)

Q. What was the reason for your nausea, if you know?

A. I just told you, was my nervous system, my stomach was nervous after the collision, and I was a little nauseated afterwards, but I never did get really sick from it.

Excerpts from Record of Conference in Washington, D. C. on August 17, 1955

MR. CRENSHAW: Then the other two things which we have before us would be The Texas Company's request for the transcript of the testimony before the Navy Board of Inquiry and the request for production of documents or statements, and so forth, by the United

States. We can take them up in the order named, or vice versa, whichever way you prefer.

As far as our motion for the production of the testimony, we feel that we are entitled to it for the reasons set out in our affidavit.

I understand, by the memorandum that you have filed, that you do not consider that we are entitled to it and it may be that the simplest thing for us today is to pass it on to Judge Bryan, but if we could dispose of it, I would very much appreciate it.

I noticed one statement that you made, if Hirshman, if you took his testimony as your witness, you would have available his testimony at the Court of Inquiry. That, to me, would indicate that you do not object to the introduction of this testimony into the evidence of this case on any confidential or any privileged basis, and I really don't see what other basis there would be for the objection of it now.

MR. MCGOVERN: Mr. Crenshaw, we are trying to run a government and we are trying to run it in a consistent and orderly way. We have with your office in the past, in the case called the Oregon-New Mexico, gone up to the Court of Appeals for the Fourth Circuit and have been told by the Fourth Circuit, in an opinion which was objected to by your office, to be taken to the Supreme Court, precisely what we are trying to do and we are trying to do in this case with respect to the witness Hirshman and with respect to each one of the other witnesses who testifies, that we wish to do what the Court of Appeals in the Fourth Circuit said was a very handsome thing.

We wish to make sure that we give you these statements of the witnesses at the time they testified. We

don't do this because of privilege or discovery, we do this because the Court of Appeals for the Fourth Circuit says that is the right way to handle it.

MR. CRENSHAW: Will you produce at the trial the testimony before the Navy Court of Inquiry of every witness you have at the trial?

MR. MCGOVERN: Sure.

MR. CRENSHAW: And you will produce the testimony before the Navy Court of Inquiry, the testimony of every witness whose deposition was taken?

MR. MCGOVERN: We did that right along.

MR. CRENSHAW: No. For instance, Commander Nelson tsetified that he testified before the Court of Inquiry and we have never seen it.

MR. MCGOVERN: I have no difficulty about giving you Nelson's testimony.

MR. CRENSHAW: We have, as I understand it, and you gentlemen are more learned in the law than I, but I understand that we have a right to examine a witness before trial, even if he is going to testify at the trial.

MR. MCGOVERN: Yes.

MR. CRENSHAW: We can go ahead and move to examine each of these witnesses that you have indicated to us testified before the Court of Inquiry. If we did that and examined him, I understand then, according to your present position, that we would at that time be furnished a copy of transcript before the Court of Inquiry?

MR. MCGOVERN: That is right.

MR. CRENSHAW: Why, Mr. McGovern, put us to the expense of actually calling those witnesses beforehand and why not give us the testimony?

MR. MCGOVERN: Let us go a little further. The one case of the witness I do remember was that fellow named Libby who was up in the State of Maine. Libby was the only witness I had any recollection of who had testified before the Navy Court of Inquiry and not before the Coast Guard.

We had Libby's testimony declassified, taken out of the Board investigation, and we were prepared to go up there to show Libby his previous testimony before he testified, to show you his previous testimony before he testified.

MR. CRENSHAW: This is the first time we knew that.

MR. MCGOVERN: In the place of that, Mr. Brush went around and had conversation with Mr. Libby.

MR. CRENSHAW: Mr. Libby is a witness to the facts.

MR. COLBY: He is explaining what was done.

MR. MCGOVERN: We are trying to explain that we are trying to run an orderly system.

MR. COLBY: The courts are full of evidence of what this procedure is and, as the Fourth Circuit said, it is handsome or something of that sort.

MR. CRENSHAW: I understand that if we go back and examine before trial each of the men who testified before the Navy Court of Inquiry, we will then be afforded a copy of that person's testimony?

MR. COLBY: So will we. We will then, just like you, see that document for the very first time because that is not available to us except for this express purpose and if you will qualify the situation so that we can see it, you can see it, too. But, unless you do it that way, we can't see it so you can't see it.

MR. CRENSHAW: For instance, let's take Lieutenant Nelson. We have examined him. We examined him in Alexandria and we asked him if he testified before the court and he said yes, he did.

MR. COLBY: I don't know anything about that.

MR. CRENSHAW: We have asked a year before that for the record.

MR. COLBY: That is right, and it's not available to us and not available to you. You read your cases and you will see how it's done.

MR. CRENSHAW: Then the thing for us to do is to file a motion for the examination of these witnesses before trial?

MR. COLBY: If you think it's worth while, I guess it is.

MR. CRENSHAW: And you will provide us at that time with that witness's testimony before the Navy Board of Inquiry?

MR. COLBY: That is what we have always done in the past.

MR. MCGOVERN: We did that in Oregon-New Mexico case.

MR. COLBY: Commander Blocher says we are being too loose, we do that when the witness is produced. In other words, I am short circuiting the process. I was assuming that yes, when you took the man you wouldn't count it as taken unless he arrived.

MR. CRENSHAW: What is the reason, if I may be naive enough to ask, that there is such a strenuous opposition to the production to us of that testimony without the attendant expense of taking the deposition?

MR. MCGOVERN: Mr. Crenshaw, we have a brief.

MR. CRENSHAW: Just answer that question.

MR. MCGOVERN: We have a brief.

MR. CRENSHAW: Would you mind putting it in a short sentence so I can grasp it?

MR. MCGOVERN: We will put it in the court house where the judge can grasp it.

MR. COLBY: Oh, well, let us say that these are not claim examinations, they are not gotten up for this purpose, they are not available to defense counsel, and this is the way it's done. You see, we won't see them—

MR. CRENSHAW: In other words, you can't get them from the Navy.

MR. COLBY: No, we can't get them from the Navy. We have no right to these. Historically, Mr. Crenshaw, as you should have learned in the Navy, the conception was that you were asking the witness to testify freely and that he was supposed to say, "Sure, the reason the ship went on the sandbar is that the old man went hard right instead of hard left," and that the junior officer wouldn't testify freely if he didn't believe that the testimony was going to be in all respects confidential and not passed around.

Now, a lot of this, through a period of time both in England and the United States, it has gotten all cut up because we now litigate these matters of military conduct and some kind of compromise has to be worked out. Whether we like it or not, as a historical evaluation this is the compromise which has been worked out and this way we can do it, this way you can do it.

Don't tell me it doesn't make any sense; I think it does make some sense.

MR. CRENSHAW: The Department of Justice, then, has no objection to the production of these things

except for these historic reasons and the compromise situation?

MR. COLBY: The Department of Justice has nothing whatsoever to do with this.

MR. CRENSHAW: I understand, so you can't object to it.

MR. COLBY: We have to object in the sense that we represent the government with a capital G. In other words, this is this whole problem that you get in personal injury cases; why should the taxpayer, the fiscus, be immersed in damages because the Secretary of State or the Secretary of the Treasury says, in his wisdom, "I cannot produce this document because I may not safely do so. It will adversely affect the relations of the United States." Not the national security, "It will adversely affect the relations of the United States because we obtained this information in confidence from the British or French and we have promised not to produce it."

MR. CRENSHAW: Excuse me, I don't mean to cut you off, but could I ask Mr. Hayes a question?

MR. MCGOVERN: Sure.

MR. CRENSHAW: Is there any way that we can get this transcript short of moving to examine these people before trial?

MR. HAYES: I am wondering whether you understand what the explanation was.

MR. CRENSHAW: It seemed to me it was two things.

MR. HAYES: It wouldn't be necessary for you to, as I understand, take a deposition.

MR. MCGOVERN: The fifteen men we are going to produce.

MR. CRENSHAW: But they give it to us the day of the case or during the course of the trial.

MR. HAYES: That is right.

MR. CRENSHAW: My understanding of discovery procedure is that it is designed to get the facts out prior to the trial so that the trial can be more intelligently handled. That is what we are trying to do. We are not trying to get these things at the trial, we are trying to get them before the trial.

There may be witnesses, Mr. Hayes, that this stuff will show should be produced and there may be questions we want to ask some of these people. There may be information in there that we don't have and haven't been able to develop, mythical standard naval operating procedure, spelled out in it. But what we are trying to do is to get that prior to the trial.

Now, is there any way we can do it?

MR. HAYES: I had overlooked this fact that that record is classified. There will be a question of getting each declassified as he is called.

As a matter of fact, we can say that you can have Jim Smith but you can't have John Brown.

MR. CRENSHAW: If you can give us one Jim Smith, we would have one more than we have now.

MR. COLBY: The difficulty is that this is not a matter of discovery. These things are not produced at all on discovery but, in order to assist in the taking of the testimony of the witness, at the time the witness's testimony is taken, the previous testimony is brought down and showed to, one, the witness to refresh his recollection so that he will know and, two, the two counsel who are going to cross-examine him so that counsel and the witness, both counsel and the witness,

may all proceed to retake the testimony in the light of what was done before so that they will be able to cross-examine him both on what he says that day and on what he said previously. But this has nothing to do with discovery.

On discovery we do not produce these, we produce these as an aid to trial procedure.

Now, as you have said, you can short circuit this a little bit by taking the deposition of the man in advance and our position has always been, and that of the Navy, that the Navy has assisted us; that there is no sense in taking the man's testimony in advance without having the previous testimony and then take him again the day of the trial with the previous testimony.

MR. CRENSHAW: Yes.

MR. COLBY: I don't think the game is worth the candle.

MR. CRENSHAW: We don't know that.

MR. COLBY: We don't know either.

MR. COLBY: We can't do it until you have asked for it in this form.

MR. CRENSHAW: One more question. In order for the witness to have this before him so that he might have the stuff declassified, I mean so that he can refresh his recollection, it would have to be declassified?

MR. BLOCHER: Yes.

MR. CRENSHAW: That procedure isn't done the morning of the trial, is it?

MR. COLBY: It's just a question of time. I can conceive of it being done the morning of the trial if it's done at the Naval Gun Factory.

MR. CRENSHAW: Even if it were, and I wouldn't think it would be, but even if it were, you have a necessary classification before it is done. You contemplate producing the witness and producing the statement; therefore, you must contemplate the declassification; that is, as of, say, September 25.

What we are asking you to do, and what I understand the Department never does, is to declassify prior to September 25. Mr. McGovern says what my office has done in the Oregon-New Mexico case. There is one significance in this case and that case; we lost that case and we don't intend to lose this case.

MR. COLBY: That was a good case, Mr. Crenshaw, so there is no reason to believe the result will be the same.

MR. MCGOVERN: Let me get my little point in because I want to refer to what Judge Bryan had in the letter.

Judge Bryan did not sit in on the Oregon-New Mexico case so, consequently, what he knows about it is by virtue of briefing. He did sit in on the HAITI and DUKE OF YORK.

There, you may remember, we were the moving party for an investigation which your office maintained was confidential aand belonged to the British Government and which you would not give up. Finally, Judge Bryan said you would have to give it up or take the consequences. Finally, the British Government decided to turn it over.

At that time Judge Bryan wanted to know, and took it up with us right then and there, whether, if the testimony before the British Government Investigation Board was available, whether we would also make

available the testimony of our witnesses before our board. Now, by that time I had a certain advantage that I do not have in this case. I had talked to our witnesses and I knew that none of my witnesses had any personal feeling that his career would be endangered because of some comments which he may have made when he was on guard as a junior officer in the course of one of these investigations where the Navy says, "Tell us all, Son, and nothing you say will be held against you."

I was aware of that problem and my people had apprised me of it so I was prepared to make a decision, knowing that the witnesses I was going to call would not regard me as having sold their career down the river for a particular case.

We proposed at that time to exchange witnesses for witness. That is all in the transcript of the DUKE OF YORK, and I am sure the judge remembers it very well because, after I exchanged witness for witness with Mr. Baird, there was some question about whether all the witnesses would be turned over and Mr. Baird said, "No, not the supervisory witnesses", and we didn't turn our supervisory witnesses over either. That was perfectly normal, too, because these government investigations include material which is beyond the scope of the collision itself.

Now, the supervisory personnel are always very difficult about turning over how they run their office. We never did find out what happened to the chart on the DUKE OF YORK and I don't know what the answer is but that is what the judge was suggesting.

If you are willing to do that, if you are willing to exchange your statement or memorandum of your deck

witnesses for our memorandum or our statements of deck witnesses, we can go around and make preliminary inquiry with the witnesses and see whether they have any objection.

So far as I can make out from what little information I have, none of our witnesses corresponding to your people would in any way have any real objection to releasing anything they might have told somebody else.

MR. CRENSHAW: The two things, so far as the trading back and forth of witnesses is concerned, I know that any rule of production of a document has to work for us as well as it has to work for you. We don't expect the judge to say, "All right, the Texas Company doesn't have to say word one and the United States has to say everything."

I will say this, in the DUKE OF YORK I don't know what went on in the DUKE OF YORK. Of course it was in the office, Mr. Baird handled it and once again we seem to be on the losing end of it. Again I can't set that case up as a great crystal for us to follow here. It may be precedent if the facts are identical and it may not be.

What I am struck with, and it might be simple-mindedness or youth or something, but there is apparently a willingness on the part of the Navy and the Department of Justice to let us have these statements if we make a motion to examine these witnesses before trial?

MR. MCGOVERN: No, no, no; what we are proposing to do is just what the Court of Appeals for the Fourth Circuit told us to do and that is that when a witness comes up and testifies as to some fact he nor-

mally, if it is four or five years after the event, he refreshes his recollections by looking at the statement his counsel took for him or, in our particular case, by looking at the testimony before a Navy Court or a Coast Guard Court. The witness does this because he does not want to testify now contrary to some statement which he made in the past.

Now, that is a reasonable view, witnesses have always had that and the courts have understood.

In litigation in Philadelphia, I have had situations come up where the judge has required me to turn over to my opponent at the time of the trial the statements which I took or that the members of the FBI took of witnesses. Now, this in Virginia is true with respect to some criminal cases under the criminal rules as here interpreted and that Judge Bryan is also familiar with.

Now, the statement of a witness is not absolute but merely conditional. The reason we don't want to do it except at the time the matter is going before the judge and with both sides producing the information on which their witnesses have been refreshed is quite simply that we want to have the trial as free as possible from the changes in testimony which you get if you work a witness over and examine him and then call him back at the trial again. If you ask the witness four times the same fact and the man is an honest witness, about the third or fourth time he will start to change his answer.

That is a matter which judges understand, too. We have no objection that we produce the witnesses whom you wanted to have us produce at the trial, all fifteen of them. As to any of them who appeared before

the Court of Inquiry, we have asked the Navy to get this testimony declassified. We have no objection to your seeing that at the time we do. We have no intention of seeing that except in court.

MR. CRENSHAW: Do the witnesses whom we have taken, for instance, Commander Nelson, he testified that he read his testimony before the Court of Inquiry.

MR. MCGOVERN: That is right.

MR. CRENSHAW: The situation that you are talking about, the witness is shown the thing and the two counsel are shown?

MR. MCGOVERN: I didn't see it.

MR. CRENSHAW: You may not have, that is your prerogative. The witnesses that we have examined, and so far as I know that may be after their examination they may meet with a truck outside this building today.

MR. MCGOVERN: Yes.

MR. CRENSHAW: Those witnesses have testified in this case for all practical purposes and yet the very thing you say was done was not done. We were not shown the transcript before the Court of Inquiry.

MR. COLBY: Did you ask for it?

MR. CRENSHAW: Yes, sir.

MR. HAYES: None of those testified.

MR. MCGOVERN: Nelson was the only one who testified.

MR. CRENSHAW: I was reading his testimony last night and he said he testified before the thing and I believe he said that Whitehead had, and I am not sure that Whitehead had.

MR. MCGOVERN: No.

MR. CRENSHAW: There you have at least one example of a man who had seen the record. We didn't know about this procedure until this morning.

MR. HAYES: He could have just dropped in the Navy Department.

MR. CRENSHAW: He went to Commander Blocher's office and read it over; that wasn't a very casual way to do it, it was directly in preparation for his testimony.

MR. BRUSH: You see, Mr. Hayes, we had no intention and did not ask for Court of Inquiry testimony because we were hopeful that by answers to interrogatories and the testimony before trial of these Navy witnesses to elicit the facts that we thought were essential to the trial. Now it develops that because of counsel's theory of the case, the log books, various log books of the Navy vessels, were permitted to be destroyed or lost through the course of time. We do not have that information, therefore, which we regard as essential, rightly or wrongly.

Furthermore, the witnesses, upon their examination, proved to be quite helpless because they hadn't read their testimony or because they didn't have their log books. Therefore, many of them who ordinarily would know a lot of the things that we think are important in the case had absolutely no recollection a couple of years later and they didn't have their log books and didn't have their records on which they could refresh their recollection. For that reason, we then made an application for the Court of Inquiry testimony because we felt the omission had to be supplied in some way and it could be supplied, and that is the reason we have asked for it, frankly.

MR. HAYES: I understand that, but you are not going to cure what you consider to be a gap in your case with respect to those men you have already taken because only one of them apparently testified before the Board and there is no record.

MR. CRENSHAW: There are other people that testified before the Court of Inquiry that didn't testify before the Coast Guard. There are some who testified before the Court of Inquiry who are not on this list of fifteen to testify at the trial. Those people might say that all of the Navy ships did some horrible thing, the WASHINGTON was perfect. I don't know what they said but if they did say that, I would be very interested in getting it into the record.

Now, that is the position that I am in.

MR. HAYES: I understand your position.

MR. CRENSHAW: Those people that convened the court presumably knew what people could best give the facts of the whole over-all situation. They called them in, they were examined by people who knew what questions to ask and were experts, and the information was fresh, the records were before them, and it was brand new. It was fine.

These witnesses we have examined in pretrial deposition, and the government has been cooperative in producing them, I don't take that away from them, but they testified fine in describing generally their station on the ship, but so far as what happened on this particular evening, Mr. Hayes, they couldn't be more vague.

Mr. Goode, who is a very scholarly-looking gentleman whom we took up north, couldn't have been more pleasant and couldn't have forgotten more. I don't

think a man like that at the time would have testified like that.

* * * * *

Excerpts from Deposition of James D. Hanlon, OOD, USS GLYNN

(P. 45)

Q. I don't recall whether you have told us what you did after you first sighted her. Would you mind giving us that again, and what was done on your ship? A. When we first sighted her, I can't recall of any specific action until we had this slowing down; the whole formation slowed down. I think the first time I saw her I thought possibly she may have been one of the screening ships.

Q. After you first sighted her did you continue to watch her and, if so, how? A. I continued to watch her as well as the other ships in the formation. I think most of my time was taken up with station-keeping in the formation and I think I just would look over at her occasionally, but I can't say that I gave her particular attention.

(P. 47)

Q. Now are you able to fix the time that the WASHINGTON passed in front of the GLYNN? If you can't fix it in minutes, can you tell us when with respect to, let us say, either the speed reduction to five knots or the resumption of speed to fourteen knots? A. I would say she probably passed ahead of the GLYNN about six or seven minutes after two o'clock. Probably it was— I know it wasn't before—it wasn't after we increased the speed to fourteen knots. When the ship passed the GLYNN, it still had to clear the

NEW KENT which was on our starboard quarter, and I remember we stayed at a slow speed for a short time after it cleared, and I can't recall whether the formation slowed down more in order to let it clear the NEW KENT or not.

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Excerpts from Deposition of Edgar Catlin, OOD, USS HOLLIS

(P. 6)

Q. Now, on the night of November 13 and 14, during the period of these maneuvers, was there any other staff or group of men on board the HOLLIS, and if so, who were they? A. Yes, the Squadron Commodore was on board with his staff.

Q. That was Captain Persons? A. That's right.

Q. Did Captain Persons have any permanent attachment to the HOLLIS for his assignment? A. Decidedly so. We were the flagship for them at that time.

(Pp. 12, 13, 14)

Q. Now, in proceeding at sea, as you did that night in simulating wartime conditions, do you in addition to instructions from the screen commodore, following out other orders? I take it there is a plan, for one thing, of operations? A. We don't follow anything except under orders from the group commander. However, we do take care of ordinary ship routine and navigation.

Q. How about courses and speeds, do you follow a general plan or instructions as to those? A. Those would be regulated by the task group commodore, or in case you reorient the screening group by the screen commander: and where you change places in the group,

you would be under instructions by the screen commander.

Q. Am I correct in understanding your testimony that on this night, or previous evening perhaps, when you set out you had knowledge of a general operating plan; that you would proceed out from Little Creek, head out to sea, and at some time turn back toward shore, at which time there would be a mock landing by landing craft with assault troops? A. That's right.

Q. Did that plan, or did any document of any kind, inform you of the general courses or routes or speeds, which would be followed, or did that come later from either the task force commander or the screening group commander? A. I can't recall that. I will say this, we knew roughly where we were going. Everyone knew we were going out to sea X number of miles and turn around and come back, so we would be on the beach at a designated hour.

Q. Now, did you know before you started out, or at the time you started out, this maneuver would be performed or would cover an area in which there might be found coastwise merchant ships? A. Yes, we did.

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(Pp. 20, 21, 22)

Q. Now, in addition to that, let us assume a target is sighted, or another vessel is sighted, what is the ordinary routine for handling that problem. A. In a group, you mean?

Q. Yes. A. There would be one designated CIC center among the whole group, and if you picked up a contact you would report that contact to the group CIC; and he would designate a letter for it, say Able or Baker, and he would assign a ship or ships to track

and report that contract to him and all of these would be broadcast to each ship.

Q. That is, the reports of a particular contact would be broadcast on some sort of communication circuit, a common circuit to all ships? A. To all ships, yes.

Q. Was that done on this particular night; in any instance, it would be routine procedure? A. As routine procedure it was, yes.

Q. Did the CIC have any other duties? A. Its major purpose was to inform the officer of the deck about any contacts that were made.

Q. Aside from plotting the course and speed of the target or vessel that is sighted and reporting that, did the CIC have any other duty? A. Well, they recommend course and speed changes at times.

Q. I see. A. They will tell you how close any contact is coming to you from that plot. I would say that just about does it.

Q. Now, as you proceeded this night in performing this maneuver, in your period as watch officer, or officer of the deck, did you receive any communications from the CIC, or transmit any to the CIC, as you recall it? A. I am sure we talked back and forth because it was through the CIC I would know if I was on station or how far off station I was. Also, they would assist me in taking a new station when any change was made. So far as any contact is concerned, I don't specifically remember any contact. I do remember the Texas Oil Company tanker being reported to me.

Q. Before we get to that — A. Before going from that I just want to make clear all contacts were reported to me by the CIC.

* * * * *

(Pp. 25, 26)

Q. Now, I don't think we completed our description of the communications between the various ships, did we? A. No, you picked the hardest question of the day on that.

Q. Well, I think there was some sort of voice radio, was there not? A. That's right, we had one voice radio on the bridge. I assume that was connected to the screen because the commodore was up there and I recall he had to give orders to the screen over that radio. We probably, or possibly, had another voice radio up there connected to the main group, to the man in charge of the whole task force. The CIC may have had another.

We were unfortunate enough to have considerable radio difficulty on board our ship. Consequently at times, when ordinarily we might have one on the bridge, it might be down in the CIC while theirs was out of order.

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(P. 37)

Q. What, based on your recollection, was the purpose of those course change orders? A. To assume the new station on the screen.

Q. I see. A. Our captain liked to get places fast, that is why I went up to flank speed, 20 knots, and as we approached —

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(Pp. 40, 41)

Q. In other words, in ordinary practice you would receive an order from the screen commander to reorient the screen in accordance with the instructions of the task force commander to the entire formation.

but in order to carry out the maneuver and reach the point of your newly assigned position you do that on your own as officer of the deck? A. That is right.

Q. Then I see an entry at 1:46, course changed to 250, and a speed change which doesn't mean anything to me. Can you interpret that to me, at 1:46? A. To 17 knots?

Q. Oh, I am sorry, yes. A. I can see how you missed that one. That again, sir, is all part of this jockeying myself into position.

Q. Does that indicate to you the HOLLIS was at that time not yet on her new station? A. No, we weren't, otherwise I would be on base course of 270 and going at the same speed as the formation.

* * * * *

(P. 44)

Q. Now, going back to the entries between 1:17 and the 1:49 entry, let us say, those entries indicate that the HOLLIS as she was proceeding, turned from due north to due west and then she went a little bit toward southerly of due west, and then back due west, then again more to the southerly of due west, is that right? A. That's right. In other words, I was jockeying to get my station. I would surmise I had been off on my maneuvering board solution and was trying to weave my way back in to station.

Q. And you also reduced speed down to 14 knots, then up to 20, and further reduced speed to 8 and then to 5 knots, is that right? A. That's right.

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(P. 57)

Q. Now, assuming such a closest point of approach was indicated on one of the circuits as at the

CAPRICORNUS, at a specific number of yards, would you regard it as part of your duty, or the duty of any other vessel, to alert the CAPRICORNUS, or would you just assume they had their radar in operation and received that message? A. I myself would not. I would assume three things; one, her own CIC picked up the message; two, that their own radar picked up the ship, and, like ours and other ships, were tracking it for their own information; and three, that the task force commander would, if necessary, order a course change to alleviate the danger.

Q. Do you mean by a course change, a change of course for the CAPRICORNUS or the entire formation? A. Whichever is necessary to keep all ships out of danger.

* * * * *

(Pp. 58, 59)

Q. Have you ever been engaged in maneuvers when picket or other vessels have warned merchant ships of the presence of these Naval flotillas in an area? A. Yes, coming up from Cuba one time on a maneuver, I don't know if we were steaming independently or not, but there was something going on in our area and this ship was coming in, and we went out and warned it away. Now, I have no recollection of the incidents or what led up to it because I think I was just going up on watch, or just coming off watch at the time. But I remember the HOLLIS went out alongside a merchant ship and sent blinker lights to it. I happened to remember it because I was standing down in the forecastle, either just coming off watch or just going on watch.

Q. Did you see any blinker lights sent to the WASHINGTON on this occasion? A. No, I don't

recall that I did. I saw a lot of lights after the collision, but I couldn't read them.

Q. Did you have a blinker light on board the HOLLIS which you could have used? A. That's right.

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(Pp. 61, 62)

Q. Suppose the lights of two or more of such vessels merge, then what can you tell about that situation, from observing the lights apparent to you? A. You can't tell much about that.

* * * * *

Q. If I have, I am sorry, I just want to find just what your feeling is. Will you explain it for us? A. Yes, I will. My feeling was, or is, that the officer of the deck on the HOLLIS, after the contact is picked up, reported it to the main body and the captain in my ship. It is not my responsibility to call the admiral or the captain or whoever is in charge of the main group to warn him any further. That was the responsibility of the CIC to report the contact to the main body. After that was carried out it was the responsibility of the captain or the commodore who had charge of the entire body.

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(Pp. 62, 63)

Q. How did you determine these lights you saw were on a vessel that was not part of your formation? A. Because all of our formation was accounted for. In other words, we knew the RUCHAMKIN was coming up behind us. This contact was picked up some miles away, and if she was somebody assigned to

us coming in to join the group, we would have known about it through the captain's order book.

* * * * *

Q. As the WASHINGTON proceeded on her course and the RUCHAMKIN was coming through the formation, they were on crossing courses, isn't that right? A. Yes.

* * * * *

(P. 64)

Q. Do you think the task force commander would be aware of this situation? A. I would rather not answer that.

Q. Well, when you did become aware of it, were those two ships far apart or very close together? A. Very close, in very close proximity.

* * * * *

(P. 68)

Q. Now, did you at the time any of these course changes were made as indicated by the quartermaster's notebook, blow a whistle on the HOLLIS? A. No, not that I remember.

Q. Was it the usual practice to blow a whistle when there was a course change? A. No.

Q. And is that true whether there are any other vessels in the immediate vicinity? A. That is true, we did blow whistles in inland waters.

Q. But not out at sea? A. Not out at sea, no.

* * * * *

(P. 69)

Q. What explantion, if you have any, can you give for the fact that no warning was given to the

WASHINGTON by any officer of any of the ships in this formation? A. I have no explanation whatsoever.

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Excerpts from Deposition of Severn Joyce, OOD, USS LLOYD

(P. 23)

Q. Do you know what the Lloyd was doing at that time, what course she was on? A. No, I don't.

Q. Is there any way you can determine that? A. The only way you could find out would be through access to the CIC logs.

* * * * *

(Pp. 26, 27)

Q. Why would you see her port running light?

A. Because she was approaching from my port side.

Q. I see. Have you any recollection now about how far away she was reported to be? A. No, I don't.

Q. Do you know, or can you tell us, what her bearing was from the Lloyd? A. No, except that she was approaching from my port bow, in the general vicinity of my port bow.

Q. Now, at that time, can you tell us where the Corry was from you?

A. I think the Corry had the position in the screen to my port side.

Q. Roughly, about how far away was she off your port side?

A. I have no idea.

Q. Yes. Was she on a line with you or abaft your beam or forward of your beam or what?

A. She was abaft my beam.

Q. Abaft your beam. In other words, this was a bent line screen, so-called; is that right? A. Yes.

Q. But you have no idea how far off she was? A. No, I don't.

Q. Where was the Hollis?

A. The Hollis was in the adjacent position on my starboard side.

Q. Do you recall whether she was abeam of you or forward or abaft your beam? A. She was forward of my beam.

Q. And what was the distance between her and the Lloyd?

A. I don't recall.

(At 3 P.M. a short recess was taken.)

BY MR. BRUSH:

Q. Now, we were talking at the time you stopped about the receipt of the word from the CIC of the presence, the bearing, course and speed of the Washington, and that thereafter you called the Captain to the bridge and he remained on the bridge. Have you any recollection of how far from the Lloyd the Washington was reported to be?

A. At the time of the first report?

Q. Yes. A. No, I don't.

Q. Do you know about how far away she was from the Lloyd when you picked her up through binoculars, roughly?

A. It would be horizon distance at night, which on our ship would be, I think, seven or eight miles. That's a very hazy guess.

Q. Can you give us some idea of the bearing of the Washington when she first appeared to you?

A. As I recall, she approached from our port bow. And that's as accurate as I can be.

Q. Have you any idea of the number of points on your bow?

A. No, I don't.

Q. Or degrees? A. As I recall, it was pretty close to dead ahead, which would make it a very few points off the port bow.

* * * * *

(P. 29)

Q. Did you read the Captain's night order book before going on watch that day? A. Yes.

Q. And you did call the Captain, and he watched and you watched. Now, what did the Washington do after you picked her up? What did you observe? Can you give us some idea? Tell us what you saw.

A. It is my recollection that the Washington appeared to maintain a steady course—

Q. Yes. A. —which carried her rather close to my bow and down my starboard side.

Q. So that I take it her course must have been at an angle toward yours, or did you change course?

A. I did not change course. I dropped behind station to avoid any possibility of our both meeting.

Q. For about how long a time did the Washington remain in visual sight of you? I mean in sight of where your ship was.

A. I would estimate at least half an hour.

Q. And during all that period you did nothing, and nobody else told you to do anything, about warning her?

A. That is correct.

Q. Did you have the Ruchamkin in continuous view from the time she reported ready to take station until the collision?

A. No. As I recall, the Ruchamkin reported from duty when she was quite far out, from the formation, and I couldn't see her. She was on the opposite side of the formation from our ship.

Excerpts from Deposition of Harry T. Morehead, CIC, USS FREMONT

Q. You are out of the Navy. Do you have any further explanation you would have liked to have made at the Navy Court and didn't have an opportunity to make?

A. No. I felt that the Navy probably picked a very poor site to conduct their operations, in the middle of one of the world's most heavily traveled seaways; but other than that I have no particular comment.

Q. Now, with reference to the Exhibit 1 which has been attached to the Government's answer to interrogatories, which is allegedly a plot of relative movement of formation units and crossing steamers, data obtained from Combat Information Center of Fremont. This plot relates to the situation preceding collision of the Ruchamkin and S.S. Washington at 0125, 14 November 1952, which is signed by Captain Day. I note that the times on the plots on this maneuvering board are 0150, 0151, 0152, 0154, 0155, and then 0202. Does this plot attempt to show all of the plots that you had on it?

A. I believe that is probably an exact duplicate, and all the plots we had on the board at that time are on that.

Q. Of what is this an exact duplicate?

A. Of our plotting board or paper that we had in CIC.

Q. Where is that paper now, sir?

A. I have no idea where it is.

Q. You had no difficulty plotting the Washington at 0202?

A. No.

Excerpt from Deposition of Milton Breece, Shipmaster for Esso Shipping Company

Q. How long have you been associated with Esso Shipping?

A. Since 1933.

Q. Of your knowledge, can you state whether the Esso Shipping Company issued any instructions to the masters with respect to encountering Naval formations at any time prior to 1952?

A. There is no difference in encountering Naval vessels or any other vessels. Our ships are required to comply with the rules of the road.

Excerpts from The Texas Company's Request for the Admission of Facts addressed to the United States

REQUEST TO ADMIT AND ANSWERS

1. Q. During the early morning of November 14 1952 a collision occurred between the SS WASHINGTON and the USS RUCHAMKIN some fifty to sixty miles off the Virginia Coast. The night was dark but clear and the sea was calm.

A. Admitted.

2. Q. The SS WASHINGTON is a T-2 type tanker of 10,195 gross tons; 504' length; 68.2' beam;

39.2' draft; 6,000 horsepower and 14.5 knots full speed; and is a single screw vessel with one rudder. She was loaded with a cargo of refined petroleum products and was proceeding in a northerly direction along the customary merchant shipping lanes en route to Philadelphia, Pennsylvania, from Atreco, Texas.

A. The SS WASHINGTON (ex CONTRERAS) is a T-2 type of SA-1 tanker of 10,195 gross tons, 523' in length; 68' in beam; and 39.3' in depth; with engines of 7,240 h.p.; and a designed normal speed of 14.5 knots and is a single screw vessel with single rudder. She was loaded with a cargo of refined petroleum products and was proceeding up the Atlantic coast in a northerly direction from Atreco, Texas, which is near Port Arthur, Texas, where she departed on November 10, 1952, bound for the Delaware River.* (*The Register of Tank Vessels of the World gives the length of the WASHINGTON as 523½', which is the length testified to by her Master at page 7 of the Coast Guard investigation held on 17 November 1952. This differs from the 504' given in the Notice to Admit. The Register of Tank Vessels and the Maritime Commission files on the vessel at the time she was owned by Maritime give her depth at 39.3'. This differs from the Notice to Admit which gave her 39.2' *draft*, apparently a misprint for "depth". The draft of the vessel testified to by her captain at the Coast Guard hearing was 30' forward and 30' 6" aft (p. 6). The 7,240 h.p. were the h.p. that she had when she was owned by the Government, and differs from the 6,000 h.p. mentioned in the Notice to Admit. The vessel was designed to make 14.5 knots, which is given as her "average speed loaded" in the Register of Tank Vessels of the world, which is identified as "normal

cruising speed" of 14½ knots by her captain at page 9 of the Coast Guard investigation. This differs from the Notice to Admit in that paragraph 2 characterized the "average speed" as being the equivalent to *"full speed"*. The log book of the vessel actually reads, "From Lake Charles, La., via Port Arthur, Texas, towards Philadelphia, Pa." Her radar log shows that she departed Sabine Pass on November 9. She was going to Atlantic Refining's docks on the Delaware River, near Philadelphia.)

3. Q. The officer complement of the WASHINGTON consisted of her master and three mates and her steaming watch of her second mate at the conn, an AB at the wheel and an OS on lookout, in addition to the engineering watch. She was equipped with a radar set which was in operation, and with visual signal apparatus on her yardarms which could be operated from a key in the pilot house.

A. The *deck* officer complement of the WASHINGTON consisted of a master, three mates, one radio operator; and her steaming watch consisted of her second mate at the conn, an AB at the wheel, and an ordinary seaman (OS) on lookout, plus an AB and standby, in addition to the engineering watch. She was equipped with a radar set which was in operation. ("Paragraph 3 has been rewritten so as to limit the statement to the deck officer complement since the Notice omitted the engine room officers; to add the radio operator, who is now a staff officer; to add the AB on standby, who was actually on watch; and to omit the portion about the "visual signal apparatus on her yardarms which could be operated from a key in the pilot house" as not being a matter brought out at

the Coast Guard hearing nor in any way known to the Government without interrogation of the Master.)

4. Q. The USS RUCHAMKIN is a naval vessel designated as a high speed transport with length of 306'; beam 37'; draft 20'; and displacement of 1,650 tons. At the time of the collision she was steaming in a westerly direction as part of a task group of eleven naval vessels of various types as hereafter described which was engaged in an amphibious training maneuver designated as "Operation Seascape."

A. Admitted, with a change in the displacement to 1,315 tons, which is that given in Jane's Fighting Ships, and with a correction of her draft from 20', as stated in paragraph 4, to 11'6" forward and 13'9" aft, which is the draft at the time of collision given by the commanding officer at page 197 of the Coast Guard investigation. The beam of the RUCHAMKIN is 36'11½", as given in the same place, which is sufficiently close to the 37' of paragraph 4 so that, unless it becomes material, there is no need to be more precise.

5. Q. This training maneuver was planned in advance by the staff of the Commander Transport Division 22, and the details of its execution were set forth in a paper known as the "Operation Order".

A. The training maneuver was planned in advance by the Commander Amphibious Training, Atlantic Fleet, which was abbreviated as "Comphibtranlant." This command was in charge of amphibious training in the Atlantic Fleet, and at the time that the training maneuver was directed it was in command of Rear Admiral August J. Wellings. The staff of the Commander Comtransdiv 22 was a staff within Comphibtranlant. The planning was actually done ashore

before the vessels or the troops arrived in Norfolk. The Army part of the plan appears to have been done at the Pentagon, which, on August 25, 1952, issued a Defense Department release outlining the exercise." ("Paragraph 5 has been rewritten to conform to the command facts. When the plans were issued to the vessels afloat they were issued through the command officer, Transdiv 22; but the plans were not drawn up by the commander of Transdiv 22).

6. Q. The maneuver as planned and carried out consisted in part at least of a mock assult by combatant troops upon the Virginia Coast in the vicinity of Camp Pendleton, slightly to the south of Virginia Beach. These troops were to be carried on board assault naval transports from Norfolk some fifty to sixty miles out to sea (across the coastwise merchant ship lane) and thence back toward the coast to a point off Camp Pendleton where they would be loaded into small boats for the actual landing.

A. Admitted except for the phrase, "across the coastwise merchant ship lanes", there being no proof that there are established merchant ship lanes such as those across the North Atlantic.

7. Q. Pursuant to the operation plan and in preparation for the landing, naval ships in at least two main groups put out to sea from Norfolk on the afternoon of November 13, 1952. These groups were known as the "slow movement group" and the "fast movement group."

A. Admitted.

8. Q. The fast movement group consisted of six large or heavy ships and five smaller vessels. After their departure from the Norfolk area the vessels of

this group consolidated and assumed certain designated stations or positions in a pattern prescribed by the operation order and known as a cruising formation.

A. Admitted.

9. Q. Five of the heavy ships were assigned stations on the arc of a circle whose radius was 1,000 yards and at whose center was stationed the sixth, the USS FREMONT. Their assigned positions were fixed with relation to a line known as the formation axis as follows: USS NEWPORT NEWS 000°; USS GLYNN 060°; USS CAPRICORNUS 120°; USS SAN MARCOS 240°; and USS NEW KENT 300°. As the formation axis was 210° T., the true bearing of these vessels from the center of the circle, or the guide, was supposed to be maintained as follows: USS NEWPORT NEWS 210°; USS GLYNN 270°; USS CAPRICORNUS 330°; USS SAN MARCOS 090°; and USS NEW KENT 150°.

A. Admitted as a general statement with the provision that the phrase, "supposed to maintained" is qualified to add "within normal ship handling limits." As a general plan or as a desired plan, the statement is correct, but as being actually maintained by real ships in a real ocean, the Government expressly points out that this is a paper plan and that at no time in a real operation would all of the vessels be likely to be precisely where they would be shown on the paper plan. This objection carries over to all of the Notice to Admit paragraphs which involve planned positions of formations.

10. Q. Four of the smaller or screening vessels were positioned out in front of the heavy ships in what was known as a bent line screen. Their assigned posi-

tions with relation to the screen axis as to bearing and to the center of the formation or guide as to range were as follows: USS HOLLIS, Station No. 1, bearing 033° to the right of the screen axis—range 3,700 yards; USS LLOYD, Station No. 2, bearing 033° to the left of the screen axis—range 3,700 yards; USS O'HARE, Station No. 3, bearing 075° to the right of the screen axis—range 5,900 yards; and USS CORRY, Station No. 4, bearing 075° to the left of the screen axis—range 5,900 yards.

A. Admitted, with the same qualification relative to paper plans and actual performance as is stated in paragraph 9.

11. Q. The fifth screening vessel was the USS RUCHAMKIN and in accordance with the provisions of the operation order she had proceeded during the evening of the 13th on an independent mission or maneuver which was part of the operation plan and from midnight until 0145 was maneuvering to rejoin the task group. The operation order called for the RUCHAMKIN to rejoin the formation about midnight.

A. Admitted, except as to the phrase, "until 0145 was maneuvering to rejoin the task group." The RUCHAMKIN had not yet reached her proper place within the task group although she had, in fact, joined the group at the time specified. The qualification may become important in the course of the trial, and the Government submits that the maneuvers made just before a collision are not facts which can profitably be established short of the testimony of the witnesses in open court.

12. Q. In the performance of this exercise all of the vessels in the heavy ship formation and in the

screen were required to maintain station on the fleet guide (USS FREMONT) and such movements as were necessary to maintain such station were carried out by rudder and engine action of the particular vessels.

A. Admitted, except that the verb "required" should be changed to "supposed" and that the phrase "without further order as part of normal station keeping" should be added after "vessels."

13. Q. If the vessels in the formation maintained their assigned positions according to the operation plan, the formation would have this approximate appearance from the air above: (Sketch)

A. The bird's eye view of the plan is admitted subject to the qualifications made as to all of these plans in answer to paragraph 9 and to further qualification that the scale does not appear to be precisely accurate. Thus the NEWPORT NEWS which is 716' long, as shown in paragraphs 14(5), is depicted in the diagram as being approximately 500 *yards* long.

14. Q. Attached to this exhibit are photographs of those naval vessels comprising the fast movement group which show the position of the navigational lights of the vessel with the height above water of each light, and bear an exhibit number corresponding to that set out hereunder before the name of the respective vessels. The description following the name of each vessel is an accurate brief description thereof:

(1) USS FREMONT, APA 44: designated an attack transport; length 492'; beam 69½'; draft 26'; displacement 16,100 tons.

(2) USS GLYNN, APA 239—: designated an attack transport; length 455'; beam 62'; draft 24'; displacement 12,450 tons.

(3) USS NEW KENT, APA 217—: designated an attack transport; length 455'; beam 62'; draft 24'; displacement 12,450 tons.

(4) USS CAPRICORNUS, AKA 57—: designated an attack cargo vessel; length 459'; beam 63'; draft 26½'; displacement 12,450 tons.

(5) USS NEWPORT NEWS, CA 148—: designated a heavy cruiser; length 716½'; beam 75 1/3'; draft 24'8"; displacement 17,000 tons.

(6) USS SAN MARCOS, LSD 25—: designated a landing ship, dock; length 457¾'; beam 72'; draft 18'; and displacement 4,500 tons.

(7) USS HOLLIS, APD 86—; designated a high speed destroyer transport; length 306'; beam 37'; draft 20'; displacement 1,650 tons.

(8) USS LLOYD, APD 63—: designated a high speed destroyer transport; length 306'; beam 37'; draft 20'; displacement 1,650 tons.

(9) USS RUCHAMKIN, APD 89—: designated a high speed destroyer transport; length 306'; beam 37'; draft 20'; displacement 1,650 tons.

(10) USS CORRY, DD 817—: designated a destroyer; length 390½; beam 40⅝; mean draft 10'; displacement 2,400 tons.

(11) USS O'HARE, DD 889—: designated a destroyer; length 390½'; beam 40⅝'; mean draft 10'; displacement 2,400 tons.

A. Admitted, with the following difference as to the vessels. In each case the Government has given

the figure in Jane's Fighting Ships. So far as the Government can determine, the difference does not appear to be material to the case.

(1) FREMONT—max. draft 28' instead of 26'; displacement 8,650 instead of 16,100.

(2) GLYNN—Length 436' instead of 455'; max. draft 28' instead of 24'; displacement 6,700 instead of 12,450.

(3) NEW KENT—Length 436' instead of 455'; max. draft 28' instead of 24'; displacement 6,700 instead of 12,450.

(4) CAPRICORNUS—Max. draft 24½' instead of 26½'; displacement 6,000 instead of 12,450.

(5) NEWPORT NEWS—Displacement 17,000 tons instead of 17,000 gons.

(6) SAN MARCOS—No change.

(7) HOLLIS—Beam 37' 11½" instead of 37'; draft not believed to be 20' but subject to further verification; displacement 1315 instead of 1650.

(8) LLOYD—Same specifications as HOLLIS.

(9) RUCHAMKIN — Same specifications as HOLLIS and LLOYD.

(10) CORRY — Difference in beam between 40-5 6' and 40 5/8' which does not appear to be material; and lack of information presently available on mean draft of 10'.

(With respect to "draft", the common meaning of this term as given in International Maritime Dictionary, is "the depth of water which a ship requires to float freely." The draft, in this sense, of vessels Nos. 7-11 would be 13'-14", as testified to by the captain of the RUCHAMKIN. The draft of the vessel would

also be influenced by the amount of fuel, water and munitions which she had aboard at the time the draft was taken.)

15. Q. In the execution of this training maneuver the aforementioned naval vessels operated under a distinct and recognized chain of command.

A. Admitted.

16. Q. The United States Navy Regulations which were in effect on November 14, 1952, were issued by the Secretary of the Navy on August 9, 1948, with the approval of the President of the United States and in accordance with the provisions of Sec. 1547 of the Revised Statutes of the United States. These Regulations were issued for the government of all persons in the Naval Establishment.

A. Admitted.

17. Q. Said Naval Regulations provide for the organization of the Navy and establish in the Chief of Naval Operations the authority to set up subordinate commanders of the various fleets, forces, groups or units into which naval vessels might be organized for operational purposes.

A. It is admitted that Sections 0204 and 0204 (1) of United States Navy Regulations read as follows:

0204. SPECIFIC DUTIES. Subject to law and as may be prescribed by the Secretary of the Navy, it shall be the duty of the Chief of Naval Operations to:

1. Direct the movements and operations of the Operating Forces, through the appropriate commanders in chief and other commanders.

18. Q. Operation Seascape was planned by the Staff of Commander Training, Amphibious Forces, Atlantic Fleet (known as COMPHIBTRALANT)

together with a planning detachment from the Staff of Commander Transport Division 22 (known as COMTRANSDIV 22). This latter commander was subordinate to COMPHIBTRALANT, who in turn was subordinate to Commander Amphibious Forces Atlantic Fleet, who was in turn subordinate to the Commander in Chief, Atlantic Fleet, who was in turn subordinate to the Chief of Naval Operations.

A. Admitted.

19. Q. All eleven vessels comprising the fast movement group were under the tactical command of Captain C. N. Day who, with his separate staff of officers and about 50 enlisted personnel, was stationed upon the USS FREMONT. By reason of this, the USS FREMONT was known as the Flagship. This vessel also occupies a position in the center of the formation and so was known as the "guide".

A. Admitted, with the clarification that after the word "FREMONT", when first used in the fourth line of the paragraph, there should be added "in addition to and separate from the regular commanding officer of that vessel."

20. Q. Within the overall command of Captain Day, the vessels of the screen were also under the immediate tactical command of Captain L. S. Persons who was known as the Screen Commander, or COMSCREEN. Capt. Persons and his personal staff exercised this command from aboard the USS HOLLIS.

A. Admitted, with the addition that after the word "HOLLIS", as used in the fifth line of that paragraph, there should be added, "in addition to and separate from the regular commanding officer of that vessel."

21. Q. In the operation order the fast movement group was scheduled to be at a point off Camp Pendleton, Virginia, at 0430 on November 14, 1952. This position was designated as point "YOKE" and was located at latitude 36-48. 9N and longitude 75-30W. Until the formation reached point "YOKE" it steamed on various courses and at various speeds to simulate in some degree at least the actual approach to an assault beach.

A. Admitted.

22. Q. Every one of the naval vessels was equipped with a bridge, from which the vessel was navigated or conned by the commanding officer or the Officer of the Deck (OOD); and with a combat information center or CIC, which was a separate compartment whose funtion among others was the collection, evaluation and dissemination of radar information. Additionally, some of the larger vessels were equipped with a signal bridge and on the FREMONT there was a separate and independent flag bridge.

A. Admitted, with the insertion of the qualification "among others" between "function" and "was" in line 4 of that paragraph since the C.I.C. had combat intelligence functions rather than being merely a large radar room.

23. Q. On the bridge the conning officer is assisted by the following personnel who have assigned to them, among others, the following duties;

Officer of the Deck (OOD)—the safe navigation of the ship, maintaining proper station within the formation, insuring the proper execution of all tactical orders, attending to the execution of the ship's internal daily routine.

Junior Officer of the Deck (JOOD)—assist the Officer of the Deck in the performance of his duties.

Helmsman—steering the ship.

Lee Helmsman—telephone talker and relief helmsman.

Signalman—in charge of visual signals between vessels.

Port Lookout—acts as a lookout on port wing of bridge.

Starboard Lookout—acts as lookout on starboard wing of the bridge.

Messenger—attends to such duties as are assigned by the Officer of the Deck.

Quartermaster of the watch—keeps a contemporaneous record of events such as course or speed changes, etc., in a bound notebook known as the "Quartermaster's Notebook."

A. Admitted as to all save the duties of the Quartermaster of the Watch. It is admitted only that the Quartermaster of the Watch maintains a quartermaster's notebook in accordance with Section 1038 of the United States Navy Regulations which reads as follows:

1038. THE QUARTERMASTER'S NOTE-BOOK. The quartermaster's notebook shall be a chronological record of events occurring during the watch. Entries in the quartermaster's notebook shall be made at the time of occurrence of each event, or when knowledg of such occurrence is first obtained. The quartermaster's notebook shall be signed by the quartermaster of the watch on being relieved.

24. Q. On the bridge of each vessel or in the closely connected or adjoining wheel house, is found the following equipment:

(a) Remote radar PPI scope.

(b) Gyrocompass repeater.

(c) Long Glass.

(d) Binoculars.

(e) Intercommunication system for instant and direct communication with the engine room and CIC of the subject vessel.

A. Admitted, with the substitution of "nearby" for "closely" connected or adjoining wheelhouse. Some of the vessels were being navigated from the topmost bridge, where all of the area is darkened to preserve night vision, and where the communications, although nearby or underneath, are blocked against light. The statement is generally correct but misleading as to operations in the nighttime when the equipment which would need light and destroy night vision should be always kept in a place blocked off from the lookouts and watch officers whose night adaptation should be maintained.

25. Q. A quartermaster's notebook was provided in which contemporaneous entries were made by the Quartermaster relating to the course and speed of the vessel as well as any exceptional events connected with its navigation.

A. It is admitted that United States Navy Regulations provides for the keeping of the quartermaster's notebook as set out in answer 23.

26. Q. A rough deck log was prepared and signed by the officer of the deck at the end of each

watch, based upon entries in the quartermaster's notebook and upon his own recollections.

A. Admitted.

27. Q. The rough deck logs are typed by the ship's yeoman and are then signed by the officer of the deck, the captain and the navigator and are forwarded to the Navy Department for permanent storage. In this form they are known as the smooth deck logs.

A. Admitted.

28. Q. Nearby to the bridge of each naval vessel is an area in which are stored navigational charts and which contains a table suitable for plotting and such other navigational work as might be necessary. Summary plots and maneuvering board solutions can be prepared at these stations.

A. Admitted.

29. Q. Standard Naval Operating Procedure required each of the eleven naval vessels mentioned above to keep complete and accurate voice radio logs, radar contact logs, signal logs, CIC logs, rough deck logs and quartermaster's notebooks.

A. Standard Naval Operatiin Procedure does not exist as a volume. It is a cliche. So far as it relates to vessel operation, it comes under the heading of customs and usages which, as in most professions, vary with the place where the professional man learned his customs and usages. As a profession, there are standard practices just as lawyers have standard practices. In order to determine this, it is necessary to find out just what the practice is. The requirement relative to log books is set forth in the Navy regulations, particularly Regulations 1034 and 1040.

30. Q. Standard Naval Operating Procedure required the maintenance of the aforementioned logs aboard the naval vessels for a prescribed period.

A. Denied. See answer 29. In addition, as part of a post-war reform, the Navy has a provision for the routine destruction of naval records which is set forth in the Records Disposal Instructions for Vessels of the United States Navy.

31. Q. In the event naval vessels are involved in a collision, Standard Naval Operating Procedure requires the preservation of all logs and other records made contemporaneously with the occurrences.

A. Denied. The Navy JAG's instructions require the preservation of all log books of any naval vessel which is, herself, in a collision.

32. Q. The bridge of each naval vessel was equipped with voice radio speakers and transmitters by means of which each vessel could speak to and could be heard by every other naval vessel in the formation. The transmitters were very similar to the ordinary French-type hand telephone and could be operated by pressing a button in the handle and speaking into the mouthpiece.

A. Admitted.

33. Q. The voice radio circuits over which are sent orders pertaining to navigation of the formation as a whole or of the individual naval vessels therein, are known as the primary or secondary tactical circuits. As these circuits are of very high frequency, their ranges correspond generally to the lines of sight, and such circuits are continuously guarded or attended on each vessel.

A. Admitted with the addition that the words "within the limits imposed by the personnel available

on watch" be added after "vessel" in the last line of the paragraph.

* * * * *

36. Q. The CICs of the various naval vessels varied somewhat in design and location, but each contained at least the following equipment:

(a) A surface search radar with PPI (Plan Position Indicator) scope.

(b) Voice radio receivers and transmitters for the primary and secondary tactical circuits and primary and secondary CIC circuits.

(c) Plotting surfaces and boards from which a contemporaneous plot could be made to show either the true or relative movement of a radar contact.

(d) Devices for the display of the formation plan, base course and speed, expected changes of course and speed and the course and speed of their own vessel.

(e) Publication containing standard naval procedure for the operation of CIC.

A. Admitted, as to a-d; but denies the existence of any publication setting forth standard Navy procedure and admits the existence of a classified publication which contains short classified information relative to the combat information as well as secret work.

37. Q. During the times in question the radars in CIC were operating and manned and the radio circuits were operating and being attended or guarded.

A. Admits.

38. Q. By means of the voice radio installed therein, the CIC of each naval vessel could possibly hear messages transmitted by all other naval vessels

and could in turn transmit to each and all other naval vessels.

A. Admitted.

39. Q. The CIC of each naval vessel could communicate with the bridge of such vessel by intercommunication systems, by voice tube or by sound powered telephone.

A. Admitted.

40. Q. The personnel of each CIC varied somewhat with the size of the naval vessel, but in each were stationed at least the following men with the duties set opposite their names:

CIC watch officer or supervisor—evaluate the information received from plots, radar and radio and transmit the same to the officer of the deck.

Radar Operator—to continuously man the radar and give ranges and bearings to objects as directed.

Plotter—to plot the radar ranges and bearings of contacts upon the various types of plotting boards available in CIC.

A. Admitted, with the limitation that the minimum number of three men shown in the organizational plan may at a particular moment not be there or at the precise duty mentioned.

41. Q. After leaving Hampton Roads, this fast movement group steamed for seven or eight hours in an easterly direction at about 12 knots. About 0053 the formation changed course to 000 (North) and about 0116 changed course to 270 (West). At 0134 the vessels in the formation were ordered to and did increase speed to 14 knots.

A. Admitted.

42. Q. These changes in course or in speed were directed by Captain Day who caused them to be transmitted to all the naval vessels in the formation over a voice radio net designated as the primary tactical circuit.

A. First sentence admitted, and second sentence denied. The second sentence contains two hypotheticals. It is submitted that it is not proper, either as a matter of form or substance.

43. Q. At the time a change in course was directed by the commander of the task force, certain, but not all, of the naval vessels were designated to and did acknowledge receipt thereof.

A. Admitted.

44. Q. The course changes at 0053 and 0116 were given by means of two orders; the first "Stand by to execute course xxx", and the second, "execute course xxx", the first message in each instance is transmitted a few minutes prior to the second. In this way all naval vessels in the formation are apprised somewhat in advance of the impending course change, and the screening vessels are given the opportunity to commence their reorientation in the manner indicated below.

A. Admitted.

* * * * *

46. Q. The only notice or warning given merchant shipping of "Operation Seascape" was the following:

"WASHDC CK 63 GOVT R 1214422 BT
GOVT HYDRO ALL SHIPS AND STATIONS BT

HYDROLANT UNNUMBERED X AREA A X VIRGINIA X OFFSHORE X DAY AND NIGHT FIRING AND FLIGHT OPERATIONS ON 13 CMA 14 and 17 NOV IN AREA BOUNDED BY LATS 36-47N AND 36-34N AND LONS 74-30W and 75-30W X SIMILAR EXERCISES ON 16 NOV IN AREA BOUNDED BY LATS 37-30N and 37-02N AND LONS 73-45 AND 74-45W BT."

A. Denied. The Notice was given on two separate broadcasts, one on the 1630 navigational broadcast, and the other on the 0430 navigational broadcast. In addition, Coast Guard Notice to Mariners, dated November 10, 1952, was issued keyed to USC&GS chart 1222 and reading as follows:

> "VIRGINIA — Seacoast. Amphibious Operations to conducted—U. S. Navy advises that on November 14, 1952, amphibious operations will be conducted in the vicinity of the Camp Pendleton Beach Area. Vessels are requested to exercise caution in the area so as not to interfere with Navy operations." (USC&GS Chart 1222)

As far back as August 25, 1952, the Defense Department had issued press releases concerning the training which was scheduled to occur and which did, in fact, occur off the Virginia Capes. In addition, the Government will show at the trial hereof that when the captain of the WASHINGTON retired, four hours before the collision, he specifically warned the mate on watch, by a special entry in the night order book, to beware of crossing traffic.

Excerpts from Government trial Exhibit No. 13, the Flag radio log from the USS FREMONT

0445 O'Hare from commander movement element
Can you identify Group of 8 Skunks South of formation Over

0501 From O'Hare
Roger wait Out

Commander movement element from New Kent
Message follows Am assuming duties of Air Defense Guard Ship . Over

0525 From Commander movement element
Roger . Out

0505 Commander movement element from O'Hare
I identify South as Coral Sea with COM CARDIV 4 Aboard by

* * * * *

Fast movement unit commander screening unit from commander movement element
My intensions are to slow to 5 kts in order to clear for on star hand Over

* * * * *

0541 Fast movement unit commander screening unit from commander movement element
Delay my last Out

0546 Fast movement unit commander screening unit
Execute Corpen Fox 000

* * * * *

0630 Fast movement unit commander screening unit from commander movement element

Speed 14 standby execute Over

Commander movement element from commander screening unit

Understand speed 14 is that correct Over

From commander movement element

That is correct Over

From commander screening unit

Roger Out

Commander movement element from commander screening unit

A Station 1 I intend to form 33C5 in order to admit Ruchamkin to the screen

From commander movement element

Roger Out

Commander screening unit from commander movement element

What does Ruchamkin bear from me Over Wait

0640 Fast movement unit commander screening unit from commander movement element

Execute Corpen Fox 257

All Rogered

Commander movement element from commander screening unit

Ruchamkin bearing 065 from you

From commander movement element

Roger Out

Capricornus from commander movement element

Station

From Capricornus

Roger Out

0650 Fast movement unit commander screening unit from commander movement element

Corpen Fox 257 standby execute Over

From fast movement unit

Roger Out

From commander screening unit

Roger Out

0700 Fast movement unit commander screening unit from commander movement element

Execute speed 8

0706 Fast movement unit commander screening unit from commander movement element

Execute speed 5, standby execute Over

From fast movement unit

Roger Out

From commander movement element

0708 Fast movement unit commander screening unit from commander movement element

Execute speed 14 Over

All rogered

0710 Fast movement unit commander screening unit from commander movement element

Speed 14 standby execute Over

From fast movement unit

Roger Out

From commander screening unit

Roger Out

0715 Commander movement element from Ruchamkin

We have been jammed we sinking help us
Over
Did you get my message we are going to
assistance of Ruchamkin Over

0715

Roger Out

Excerpts from Deposition of Anthony J. Lazarczyk, signalman aboard the USS GLYNN

(P. 12)

Q. Could you outline what your duties were and what the duties of the other man were?

A. We both acted as lookouts, high-powered lookouts. I was the supervisor of the watch. Our watches were concerned with handling traffic by visual methods, flag hoists, semaphore, and flashing lights. That is about it.

Q. You speak of being a high-powered lookout. What do you mean by that, sir?

A. Well, you are supposedly to be a better lookout than lookouts are aboard ship, so they designate you a high-powered lookout.

Q. Is it because of your increased alertness or better equipment, or both?

A. It should be because of your alertness.

* * * * *

(Pp. 23, 24)

Q. Now, do you recall having seen this S.S. Washington on this evening prior to the collision?

A. Not prior.

Q. You did not see her prior to the collision?

A. No, sir.

Q. Do you recall overhearing any conversation with respect to her prior to the collision?

A. No, sir.

Q. What were your duties from, say, quarter of two to two-fifteen on this evening?

A. Just acting as a lookout and looking for any lights for communications.

Q. Well, now, how do you account for the fact that the WASHINGTON crossed in front or is said to have crossed in front of your vessel and to have been visible to several of the other vessels in the formation for some twenty minutes or half hour prior to the collision, and you were a high-powered lookout and never sighted it?

A. I didn't know it was there.

Q. Did you sight a light?

A. There was a lot of lights out there. There was quite a few ships. I didn't have any idea as to which.

* * * * *

(P. 26)

Q. As to these lights you sighted up ahead, could you give me some description of how they appeared to you?

A. Just white lights.

* * * * *

(Pp. 34, 35)

Q. Now, during your watch from, say, a half hour prior to the collision until the time of the collision, would you keep a lookout astern in the direction of the Fremont as well as in other directions?

A. Yes, sir.

Q. Do you remember seeing the flashing light of the Fremont during that time?

A. No, we had no communication with her.

Q. Do you remember any signal being sent from the Fremont to you or to anybody else during that time?

A. It wasn't to us. It may have been to another ship, but it wasn't to us.

Q. Do you remember any signal being sent?

A. I don't.

Q. You do not have any recollection of any signal being sent from the Fremont?

A. No.

* * * * *

(P. 36)

CROSS-EXAMINATION

BY MR. MCGOVERN:

* * * * *

(P. 37)

Q. Addressing your attention particularly to the period before the time you joined this rescue party at the time when you did not know that a collision had occurred, had you sent any messages by flashing light or infra red light?

A. No, sir.

Q. To any ship?

A. No, sir.

Q. Had you received any message by flashing light or by infra red light from any ship?

A. We were not.

Q. Were they using infra red that night?

A. No, sir.

Q. Were you showing running lights on your vessel that night?

A. We were.

Q. Did the other vessels around you have running lights?

A. They did.

Q. I asked you this question but I will ask you again.

Did you receive any message by flashing light from any other vessel before the collision?

A. We didn't.

Excerpts from the Deposition of Edward W. Walthall, ODD, USS HOLLIS

(Pp. 32, 33, 34)

Q. You may refresh your recollection by any other records you have before you in order to recall exactly what the formation and the screen were doing on this night at zero zero zero about one-thirty.

I am interested in getting some sort of a diagram, if you can give it to us, not exactly, but sort of a freehand indication of what type of maneuver the screening vessels would make, what courses they would follow, what turn they would make in getting out from the position that they were in ahead of the main body of zero zero zero to a position ahead of the main body on 270.

A. We would have to go approximately, relatively from here to here, which would require a course of around, course around—

Q. Would you mark thereon "O'HARE", the X means O'HARE, does it not?

A. I put O'HARE 1 and O'HARE 2.

Q. That is right.

A. (Marked the yellow sheet of paper.)

Q. Now the O'HARE is the right-hand screening vessel of the formation out ahead of the formation at zero zero zero in order to get in the same position relatively, ahead of the formation on a course change to 270, she would have to in a general way follow a course indicated by the dotted line on that diagram?

A. That would be the relative movement.

Q. O'HARE 1 to O'HARE 2.

Now similarly the other vessels, other screening vessels would have to make a turn to get to their same relative positions ahead of the formation, but would they follow a same course, or a different course?

A. They'd follow a different course.

Q. And is it a fact that each of the screening vessels would have to follow a course different from the other and proceed at different speeds?

A. Yes, sir.

* * * * *

(P. 37)

Q. Well, suppose you tell us then how long it took the O'HARE to proceed from her station at right-hand screening vessels at zero zero zero to right-hand screening vessel on 270?

A. Well, we can check it, the log, and see the period of time that elapsed.

Q. Well, please do. I would like to have that information if it is contained in there.

A. Well, according to this log, it took us 24 minutes. From 0014 to 0138. That could be a couple of three minutes off, of course. You have to turn, you have to pick up speed and—

Q. Who would determine and how would you determine when you had arrived at the new station?

A. Which ranges and bearings to the guide.

Q. Would you determine that?

A. Yes, sir.

(Pp. 45, 46, 47)

Q. Now proceeding along at 14 knots on 270 and you received an order from the screen commander to take station 5, will you tell us just what the O'HARE did in order to carry out that instruction, what course changes she made, what speed changes she would make?

A. Well, I remember in that instance our speed remained the same. However, we steered right about five degrees and over a period of approximately ten minutes to acquire a new station; but it was not a radical change for us, and I remember that the RUCHAMKIN, having been assigned that station and she was not near her station, and I remember distinctly that I just eased over rather than make a radical change of course and speed. I knew where I was going and I had a very short distance to go relatively, so I just edged over into station 5 rather than make a radical change.

Q. When you made that course change, you blew no whistle?

A. No, sir.

Q. When you made that course change, did the vessel, I take it was the HOLLIS, and number one, make any change of position?

A. She had a slight change, I believe, sir.

Q. So that it would be necessary for her, I suppose, to turn slightly to the left to allow some room for the RUCHAMKIN to come in and assume position, which would be what, 3?

A. Yes, sir. I assume that her relative position would be slightly to the left; yes, sir, because a five ship screen is set up a little differently from a four ship.

Q. And the instructions to shift to a five ship screen would come over voice radio from the screen commander, would it not?

A. Yes, sir, and that came at time 0207.

Q. By the way, while we are on the subject, do I understand it correctly that the screening vessels are given the even numbers when they are on the left and the odd numbers when they are on the right?

A. Yes, sir.

Q. So that in this instance the outside left vessel would be number 4?

A. Yes, sir.

Q. Inside number 2 and then the HOLLIS which was to the right, would be number 1 and the O'HARE would be number 3?

A. No, sir, we assigned to 5; the RUCHAMKIN was assigned to 3.

Q. That is in five ship screen, but—

A. Yes, sir.

Q. But in the four ship screen, you had number 3?

A. 4 ship screen position number 1 would be slightly to the right, to the starboard side, relative position. One would be slightly to starboard. Position 2 would be slightly to port. In a five ship screen position one would be dead ahead.

Q. I see. And 3 would be a little to the right and—

A. Five on the wing, two to the left and four on the port wing.

Q. Would the vessels, number 2 and 4 on the screen, make any changes of position in order to shift from a four to a five ship screen?

A. Very slight, sir.

Q. But they would make some changes?

A. They would just change course maybe ten degrees.

Q. Now do you recall any of the screening vessels blowing a whistle when they changed from a four ship screen? Put it this way: When they changed course in order to carry out or shift their positions from a four to a five ship screen—

A. No, sir.

Q. You didn't hear any whistle?

A. No, sir.

* * * * * *

(Pp. 48, 49, 50, 51)

Q. When did you do that? You changed then from 270 to 257

A. At zero one forty-five.

Q. And that signal to carry out that change of course came from the officer of the task?

A. O.T.C.; yes, sir.

Q. Force?

A. It came from the O.T.C. through the screen commander; actually amplifies the order of the O.T.C. O.T.C. orders it. The screen commander reorders it.

Q. Yes. Do you know the purpose of shifting the course from 270 to 257?

A. No, sir, I don't. We had numerous contacts on each side of us and up ahead of us, but—

Q. Before we get into the contacts, I am trying to find out, if I can, just what the O'HARE did, what movements she made that night about this time and can you tell us how long a period the O'HARE proceeded on 270 after she had arrived on that station before one forty-five when she received orders to change to 257?

A. Well, we evidently arrived at 270 on one forty-five and for 7 minutes we steered 270 and then at zero one forty-five why we changed course to the left to 257.

Q. That is a 13 degree change. How would you accomplish that change? What change would the O'HARE make? How much of a swing?

A. She would have to swing very little because at the time those heavies moved around, then we could move around without any difficulty, maybe change ten degrees to port, put on one knot, slow right down again.

Q. Well, that is what I am trying to find out.

A. Yes, sir, very slight course change.

Q. You say very slight, but that may not mean very much to someone who doesn't know. Can you give us a better idea in degrees what helm movements, or speed changes are necessary to carry out that course change?

A. Well, offhand I would say we would come left, put on one knot, come left, fifteen degrees, steam 3, 4, 5 minutes.

Q. And then when you

A. Steady up on 257, cut our speed down.

Q. Then you might have to come right angle and stay up?

A. You might come right five degrees to actually get right on schedule.

Q. Or, in other words, in order to go from 270 to your projected station on 257 you wouldn't necessarily follow a straight line at the same speed at which you had been previously proceeding? It's necessary to make a speed change?

A. Slight course change and very slight speed change.

Q. And when you say "slight" that can mean a couple of degrees one way or the other?

A. Well, I say slight. I mean ten degrees to port, fifteen to port.

Q. Now do you remember what instructions came over the voice radio to you and to the RUCHAMKIN when the screen position changes were given? In other words, can you give us the substance of those orders?

A. Well, at 0207 the screen commander ordered us to take station 5 and ordered the RUCHAMKIN, who at that time was circling within visual range and radio range to take station 3, and we proceeded to that station.

Q. Well, now do you remember what orders were given to RUCHAMKIN, or hearing any of the orders besides—

A. I heard them; yes, sir. I don't have the exact wording of it. I know the general context of it.

Q. All right. Will you tell us?

A. Screen commander told the RUCHAMKIN to proceed to station 3, screen such and such, course such and such, screen axis such and such.

Q. Now it is reported that the RUCHAMKIN got her instructions to expedite. Did you hear those orders?

A. Yes, sir, I heard that.

Q. About when did those expedite instructions come through?

A. I believe they came not more than 3 to 4 minutes prior to the collision.

Q. Well, when with reference to this instruction to the RUCHAMKIN to take station were those instructions given to her? That is—

A. To expedite?

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(P. 52)

Q. Let's go back to zero two o six. On signal from O.T.C. change speed to eight knots. You previous to that, you'd been proceeding at fourteen?

What was the reason for that order?

A. I don't know specifically. In my opinion we slowed somewhat to allow the RUCHAMKIN to be in a better position to take her general position. She came in from astern of the formation and her relative speed would be rather low because the formation was going away from her. She did not have a great deal of speed. She was not a fast ship. If we were at 14 knots and she were at 20 knots, her relative speed would only be 6 knots which would take her quite a long time to arrive on her station so I should imagine that the reduction of speed was to allow the RUCHAMKIN to take her station.

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(Pp. 57, 58)

Q. Now let's get down to the WASHINGTON. Do you remember her?

A. No, sir.

Q. Do you remember seeing her before the collision?

A. I do not remember seeing her specifically. As I have said, there were a number of contacts out there, numerous contacts and I could not remember specifically the WASHINGTON.

Q. Well, when you started out, and by "you" I mean the O'HARE and you individually as one of the officers of the vessel, when you started out on this maneuver, having read the op order and perhaps being briefed on it, were you aware that this operation or practice maneuver was in the vicinity of the merchant shipping lanes?

A. Yes, sir.

Q. What provisions were there, or what instructions did you receive with respect to your navigation, or what you would do in the event you met any merchant ships perversely?

A. Well, sir, our captain gave us verbal orders that afternoon to be especially careful during the night due to the number of ships along that coast, just off the coast. I knew we were going to run into a lot of contacts and I considered myself very alert that night in watching these contacts. Captain was on the bridge quite a bit during the night because we had contacts ahead of us, and on the port side of the formation and passing down the starboard side of the formation, numerous ones, and we had so many contacts that I

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couldn't make out the RUCHAMKIN specifically. I mean the WASHINGTON, specifically.

(Pp. 60, 61, 62)

Q. Now this formation, you said, was between 5 and 6 miles wide, that is from the screening vessel on the left to the O'HARE, which was on the extreme right?

A. Yes, sir.

Q. Do you have any recollection of seeing a vessel which might have been the WASHINGTON proceed in between the HOLLIS and the HOWARD and in through the formation? Do you remember this incident of the WASHINGTON?

A. I do not remember seeing the WASHINGTON come through the screen. The visibility that night was extremely good. The visibility was almost unlimited and there were quite a number of lights through the main body and through the screen and on beyond the screen from my position to the port side of the task force. Numerous lights.

Q. Yes.

A. And there were so many there that I specifically did not see the WASHINGTON come through the screen.

Q. Well, now did you hear any reports come through radar or from the O.T.C., or from the screen commander regarding the presence of the WASHINGTON in the formation?

A. No, sir.

Q. Did you have any knowledge of where the RUCHAMKIN was at the time this order came through to take station number 3 in the screen?

A. She was astern of the formation to the best of my knowledge.

Q. How far astern would you say; had you checked her position on radar? Do you know approximately?

A. I watched her visually. She came astern of the main body and swung too wide actually, and lost a lot of—well, she swung rather wide astern of the main body of the formation. That is why she was told to expedite taking station because she was, made too wide a swing astern, should have cut closer to the stern of the formation. She had to come up ahead of the main body.

Q. I think you said, as I recollect, that you recall that this order to the RUCHAMKIN, which would, I take it, come over this common voice radio circuit, to expedite came through around two-ten?

A. Yes, sir.

It came through very shortly before the collision itself.

Q. What is there that fixes that in your mind?

A. I watched the RUCHAMKIN move up in the station.

Q. Yes. Why?

A. Because I followed her around, just my interest in seamanship. I saw her make too wide a turn astern of the formation and I know that she was going at approximately 20 knots, judging by the wake she was throwing to move up to get into position and I never did see the WASHINGTON.

* * * * *

(P. 64, 65, 66)

Q. Were you in the position to hear any radio communications between this various C.I.C.s?

A. Yes, I was in a position to hear most of it.

Q. How would you hear it? Was it loud enough so you could hear it?

A. No, sir, we had remote loud speakers on the open bridge and also in the pilot house. Quite a bit of this information as to contacts I would not hear though.

Q. Why?

A. Because we had no speaker on that circuit. It was a circuit dealing primarily with contacts of C.P.A.s and courses and speeds on various ships. I would not be in a position and was not in a position to hear all the information that came in the C.I.C. as to these various contacts out ahead and around the formation.

Q. Well, did you hear any warning come through the C.I.C. to the RUCHAMKIN or the WASHINGTON?

A. No, sir, I didn't hear it. It could have come on nets that I did not hear. I just did not hear.

Q. Could you please, as you have done before, draw a rough diagram of the position of the RUCHAMKIN and the O'HARE and the main body at two-ten to give us some idea of what you are talking about; that was the time that you think this order to expedite came through to the RUCHAMKIN?

A. You want now the WASHINGTON?

Q. No, not the WASHINGTON. The RUCHAMKIN.

A. RUCHAMKIN, two-ten?

Q. Yes.

A. O.K.

Q. Just mark "main body" around that.

Now at two-ten when the RUCHAMKIN was given instructions to expedite, having received also instructions to take position number 3, it was necessary for her to follow approximately the course indicated by that dotted line?

A. Yes, sir.

MR. BRUSH: May we have them marked?

(The Notary so marked the two yellow diagrams respectively as Walthal Exhibits 1 and 2.)

* * * * *

(Pp. 73, 74)

Q. That's right. Now under what circumstances did you see the RUCHAMKIN?

A. Well, I saw the RUCHAMKIN come around the stern of the main body and head for her new position in the station or position in station 3. She made a very wide turn there and she had quite a long way to go relatively speaking, and she had what appeared to me to be a straight shot from her turn astern of the formation up to station 3. I watched her there when she was in her turn and also after her turn and I was watching her when she received her expedite, but I did not see the collision and I did not, was not watching the RUCHAMKIN two or three minutes prior to the collision.

Q. What were you doing then?

A. I was checking the contacts ahead and other duties, at the time of the collision.

Q. What lights, if any, did you see on the RUCHAMKIN?

A. I distinctly saw the RUCHAMKIN's running lights and all the ships. The visibility was excellent that night and the whole main body in all the ships there, their lights just stood out and it looked like a city. The main body looked like a city, there were so many lights, and that was one of the difficulties to see a ship between ourselves and the main body would be somewhat difficult due to the number of lights in the background and on beyond.

* * * * *

Excerpt from the Deposition of Theodore A. Jore, signalman on the USS FREMONT

(Pp. 24, 25)

A. It is very easily removed.

133XQ. What do you do—just pull it off?

A. It is twisted on.

134XQ. I see.

Are you able to focus or turn or trim the 24-inch lights? In other words, are they in a fixed position, or can you swing them around?

A. No. They can be elevated and also rotated 360 degrees.

135XQ. Can you signal with those lights?

A. Yes.

136XQ. You do signal with those lights on occasion, don't you?

A. When the occasion arises, when you have a large distance to communicate.

137XQ. Now, in your direct examination you have spoken of various time intervals.

Tell me how you fixed those time intervals. Is that just a guess on your part, or did you have a watch and did you look at it?

A. Those times given are all approximate, due to the fact that you might say I am not a clock watcher.

138XQ. Did you have a wrist watch?

A. Yes. I had a wrist watch.

139XQ. Could you see it? Had you looked at it?

A. No, I hadn't.

140XQ. When did you first notice the lights of this unidentified merchant vessel?

A. When she was located off our port bow.

141XQ. Will you estimate, if you can, please, how long that was before you first started, or before you received the order from Captain Day to signal?

A. Approximately 15 minutes.

142XQ. How was your attention attracted to her presence? Did you hear somebody talking about her, or did you notice a light, or what?

A. No. Part of our duties as a signal aboard ship is to maintain a look-out and see what is going on.

We have to watch for visual communications, and that is how I happened to notice that light.

143XQ. So that while you are standing watch you continuously look around?

A. That is right.

144XQ. So that you will be able to pick up visual signals sent to you, either by vessels not in the formation or vessels in the formation—is that right?

A. That is right.

* * * * *

Excerpt from the Deposition of Willis Hempfer, CIC, USS HOLLIS

(P. 124)

Q. Did anybody in your C.I.C. have any knowledge of where the RUCHAMKIN was? Did you hear any discussion about the RUCHAMKIN?

A. No, sir.

Q. Did you hear any inquiry from the conning officer, or from the captain, Captain Persons, concerning the RUCHAMKIN?

A. No, sir.

Q. Did you hear any requests for ranges and bearing from Captain Persons to the RUCHAMKIN?

A. No, sir.

Q. What is the name of the commanding officer of the HOLLIS?

A. David L. House.

Q. House?

A. David L. House?

Q. Did you hear any inquiry from Commander House concerning the range and bearing to the RUCHAMKIN?

A. No, sir.

* * * * *

Excerpts from Deposition of Charles W. Morris, port lookout, USS RUCHAMKIN until 2:10 a.m.

(P. 7)

Q. How long did you remain as a lookout on the port wing of the bridge?

A. Approximately a half hour.

Q. Which would bring you up to what time?

A. About ten after two.

* * * * *

Q. During the time when you were on watch on the port wing of the bridge did you see any new light in addition to those which hadn't been pointed out to you by McElroy when he turned over the watch to you?

(P. 8)

A. Well, I don't recall for sure.

Q. Now, what was the name of the man who took over the port lookout from you?

A. McElroy.

Q. The same name you relieved before?

A. Yes, sir.

Q. Did you tell him what lights you had seen?

A. I told him just about the same as before.

Q. Was it just about the same as before?

A. Yes, sir; I believe so.

Q. Now had you seen any colored lights approaching your vessel during the time you were reported lookout?

A. I couldn't say for sure. I don't recollect.

Q. Did you report any colored lights?

A. I am not sure.

* * * * *

(P. 29)

Q. I am now talking about the period from one o'clock until about twenty minutes of two.

A. Yes, sir.

Q. Could you see the lights of the other Navy ships during that period?

A. I believe I could, sir.

* * * * *

(P. 30)

Q. During that period did you see any lights?

A. Yes, sir.

Q. What lights did you see?

A. Seen white lights.

Q. Where were they located?

A. I believe they were dead ahead, couldn't say for sure.

Q. Can you describe their appearance to us?

A. They was white lights.

Q. Do you know how many there were?

A. No.

Q. Were they bunched together; were they spread out?

A. They looked like they was—well, they wasn't—couldn't exactly say was bunched together, wasn't spread out neither.

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(P. 31)

Q. Did you see any other white lights during the period of one o'clock to one-forty a.m.?

A. I don't believe so, sir.

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(P. 33)

Q. Now one-forty, when the bridge, previous bridge talker returned and relieved you, you then relieved the man who was standing port lookout?

A. Yes, sir.

* * * * *

(Pp. 34, 35)

Q. And from whom you got your instructions. When you took over the duty as port lookout.

relieved the port lookout, what did you say to him and what did he say to you?

A. I asked him if he had any ships out there and he told me that he—told me what ships he had out there, that he had reported them.

Q. What did he tell you, do you remember? What ships he had out there?

A. No, sir; I don't remember.

Q. Do you know whether there was one or fifty or five or ten?

A. It was more than one, but there wasn't fifty. I couldn't say the exact number.

Q. Where were they?

A. They were dead ahead, sir, about anywhere from dead ahead to about ten points off the port bow.

Q. Were they the same white lights that you had seen as you were standing the watch as bridge-taker?

A. Yes, sir.

* * * * * *

(Pp. 37, 38)

Q. How long a period of time did you stand port lookout?

A. Approximately a half hour.

Q. During that half an hour did you make any report?

A. I can't remember, sir.

Q. How often did you continue to look out ahead?

A. Repeat, sir?

Q. Well, did you, after you first scanned the horizon with the binoculars when you took over the watch, did you look through the binoculars again?

A. Yes, sir.

Q. How many times?

A. I'd say about every two or three minutes.

Q. What area did you cover on the port side?

A. From dead ahead to about five points off the stern.

Q. Did you at any time see any other white lights than those that you first observed when you took over or relieved the port lookout at one-forty?

A. I couldn't say for sure, sir.

* * * * *

(P. 43)

Q. Now during this thirty-minute period you stood port lookout did you receive any report of the presence of another contact?

A. Did I receive any report of it?

Q. Yes.

A. No, sir.

Q. Did you hear anything about it?

A. No, sir.

Q. Did you hear anybody speak about it?

A. No, sir.

* * * * *

(P. 44)

Q. Now when you were relieved as port lookout, what did you say to the man who relieved you and what did he say to you?

A. Why, told him everthing was just about the same, I believe. I'm not sure.

* * * * *

(P. 45)

Q. How long did it take you from the time you left the place where you were standing port lookout

to the time when you came out from underneath, out below deck and saw the hull of the ship about fifty feet away?

A. I'd say about three or four minutes.

* * * * *

Excerpts from the Deposition of Thomas H. McGlaughlin, OOD, USS NEWPORT NEWS

(P. 12)

Q. Will you please describe when you first picked up the Washington, how she was sighted, by whom, if you remember, and what was done.

A. We first picked her up when we were on our easterly course.

Q. You were on an easterly course?

A. Yes. The ship and formation were on the easterly course.

Q. Where was she at that time?

A. She was to the south of us.

Q. And how did she bear from you?

A. I don't recall. She was quite a ways away, and I was not too much concerned at that time.

Q. How did you pick her up—on radar?

A. Yes, sir.

Q. About how far away was she at that time?

A. I don't remember.

Q. Thereafter, tell us what happened as far as the Washington was concerned.

A. We tracked the Washington on C.I.C. and her movements were reported to the bridge. That is routine. We turned north; and that northerly course,

of course, headed away from the Washington, so we were less concerned then.

* * * * *

(Pp. 15; 16, 17, 18, 19).

Q. When you set out from Norfolk, were you aware of the fact that this practice maneuver would take your vessel across merchant ship lanes and vessels that were proceeding up and down the coast?

A. Yes.

Q. Coming back to the time the Newport News was on this northerly course or approximately northern course, did you take any notice or particular note of the Washington at that time? Did you have a report from her on C.I.C. or—

A. We maintained a track of the contact.

Q. Why?

A. That is standard procedure.

Q. What is your recollection of the approximate course of the Washington during the time you were on the northerly course? I do not mean in degrees.

A. Still north.

Q. In other words, she continued to travel north after the Newport News turned on a general northerly course, didn't she? Were you farther out to sea than she was at that time?

A. Yes, sir.

Q. As you proceeded north and she proceeded about north, how far away would you say you were from her?

A. We opened the distance.

Q. Opened the distance?

A. Quite rapidly, yes. I would say that as we went north, she [illegible] as I say, I don't recall, but

she possibly could even haven gotten out of radar range.

Q. Now, there came a time later on in the early morning when the task force group turned left or in approximately a westerly heading. Did you continue to maintain a watch on the Washington, do you recall?

A. Yes, sir.

Q. Do you recall in a general way, as the Newport News turned left or westward, where the Washington was at that time? I don't mean exactly, but approximately?

A. Approximately on our port bow at considerable range.

Q. Considerable range?

A. Yes.

Q. Would that be in excess of ten miles, do you think?

A. It possibly could.

Q. As you continued on this westerly course or approximately westerly course, did the Washington, as you recall, appear to maintain her same course and approximate same speed?

A. Yes, sir.

Q. In other words, she was just plodding along like most merchant ships bound up the coast?

A. Yes, sir.

Q. Would you describe in a general way what you observed of her or what reports you had from the C.I.C. as you headed westerly? I would like, if I could, to get your general narrative of this picture as you went along on that night, as best as you may recall it now?

A. We had, as I remember, several contacts, of which she was one. We were more concerned about

her than any of the rest, and we were not tracking any more.

Q. Were these other contacts presumably merchant ships?

A. Other than our own formation, yes, sir. The contact that we later again found was the Washington, approached the formation and passed bearing from our port bow. She was about 315 relative, or so. We saw her lights. I don't remember exactly what the range was. I do remember specifically when she was roughly one to two thousand yards outside of the screen.

Q. When you say "outside" is that ahead of the screen, in the direction in which you were—

A. On the other side of the screen from us.

Q. Go ahead.

A. She continued to close the range. At that time the bearing and the course and speed of the Washington were such that it looked like she passed through the screen and ahead of us. She did that, went across the forward—went ahead of the main body of the heavy ships in formation, inside the screen, and began closing the ships on the starboard side of the formation, and collided with the Ruchamkin.

Q. Tell me: while all this was going on, did you know where the Ruchamkin was?

A. Yes.

Q. I take it you were aware that the Ruchamkin was scheduled to take her station in the screen at some time or other, which would mean that she would have to proceed up alongside the main body and up ahead into the screen; isn't that right?

A. That is correct.

Q. Did you look at the radarscope at any time while the Washington was proceeding on a northerly

course and this group was proceeding on a westerly course?

A. Yes, sir.

Q. Do you remember whether you saw the Ruchamkin?

A. If I had looked at the scope I would have. There were many ships in the formation. I saw the whole formation in the scope.

* * * * *

(Pp. 20, 21, 22)

Q. But you do have a fairly distinct recollection of the Washington; and is that because or the subsequent collision with the Ruchamkin?

A. No; it is because I noticed her, as I say, very definitely when I took particular interest when she was outside of the screen and appeared to be on a course such that she would enter the screen.

Q. Why would that interest you?

A. Because I am responsible for the safety of the ship

Q. Well, was there anything that was said or anything that you saw, or was there any report that you received on C.I.C. or otherwise, that indicated to you that the Newport News might be in danger because of the presence of the Washington?

A. Yes. She was—the Washington appeared to be on a course such that she would enter the screen and come reasonably close to the Newport News.

Q. Now, do you remember about when that occurred? How long before the collision was that?

A. Oh, I would say ten—maybe ten minutes

Q. Ten minutes?

A. Ten minutes, yes, sir.

Q. Where was she with reference to any of the screening vessels or any of the vessels in the main body, at the time you took particular notice of her?

A. Approximately 2000 yards outside the screen, on the other side of the screen from us.

Q. Could you—by just drawing a few dots on some paper here, indicate the approximate situation at that time? In other words, I am trying to visualize where she was when you felt that there might be some difficulty.

A. (Witness refers to a pad of paper.).

Q. I don't know if you can fix the hour or the time; but, if you can, pinpoint it a little bit so we can get an idea of when this situation occurred.

A. (Witness prepares diagram.) I don't know whether I should put these screen ships down or not. That is pretty vague in my memory, as to where they are, to represent the screen. There were other ships in the main body, but I didn't draw them in.

Q. Have you any idea where the Ruchamkin was at about that time?

A. Roughly, somewhere over here (indicating on diagram).

Q. Now, have you any idea about what time this situation existed? If you can give the time, how close would it be, say to 2 o'clock? One way or the other, can you fix that?

A. 2 o'clock is as good a time as any.

* * * * *

(Pp. 26, 27)

Q. Did the Newport News have any difficulty maintaining station at night?

A. No, sir.

Q. From what you could see, were the other ships on station?

A. Yes, sir; except the Ruchamkin was joining up.

Q. Is there a certain tolerance for vessels trying to maintain station?

A. Yes, sir.

Q. What was that tolerance on this night, would you say?

A. Three degrees in bearing and 10 per cent of range.

* * * * *

(Pp. 36, 37)

Q. After she passed through the screen, what could the Washington have done to get away from the vessels in the formation, in your opinion?

A. That would be hard for me to say. If she had followed the rules of the road, she should have gone astern of all the vessels. However, after she passed through the screen it would have been impossible

Q. What rule of the road would require her to go astern of the vessels in the formation?

A. I can't state it exactly, but the rule says the ship on the starboardhand in a crossing situation is the privileged vessel, and the burdened vessel is obligated to clear that ship astern.

Q. In other words, you assumed that the starboardhand rule applied to that situation, did you not?

A. Yes, sir.

Q. Then why did you reduce speed?

A. Because I had orders from the O.T.C.

Q. Didn't you know that that violated the rule of the road, this rule of the road that you regarded as applying to this situation?

A. In that particular instance I think I would rely on the rule of good seamanship and the general credential rule; and it looked to me like that was a good thing to do.

Q. In other words, you thought that the O.T.C.—

A. It would make the Washington pass farther ahead of us than she ordinarily would have, had we not reduced speed.

* * * * *

(P. 42)

Q. As you were proceeding on this night in the Newport News, how wide an area would you say this formation extended over the ocean, let us say between the ships on the left and the ships on the right?

A. (Referring to McGlaughlin Exhibit 1) Between six and eight thousand yards in diameter.

Q. Are you talking now of the heavy ships in the formation?

A. No; I am including the screen.

* * * * *

(P. 43)

Q. If you wanted to talk to the Ruchamkin, what did you have to do? What was necessary; can you give us some idea?

A. We have a hand set on the open bridge; and I could contact the ships in the formation with that hand set.

Q. If you wanted to warn the Ruchamkin about the presence of the Washington, all you had to do was pick it up like a telephone receiver and say, "Do you

know the Washington is here?" or something like that; isn't that right?

A. That is right.

* * * * *

(Pp. 65, 66, 67)

Q. Wouldn't it be advisable to warn against

Q. Wouldn't it be advisable to warn merchant

A. Oh, it might be advisable. In my opinion, I don't think that it is any—it would be any obligation at all on a ship to warn another ship in a situation like that. There are all these lights there, and anyone who could see would know the situation. A man would not have to be warned.

Q. What obligation is there, under the rules of the road, to avoid lights? In other words, you assume in all of your opinions and conclusions that when you see a light you are supposed to move away from it; is that right?

A. No, sir; you are supposed to use that light as information in helping you to estimate the situation.

Q. What information were you giving on the other naval ships of the presence of the Ruchamkin, by the lights that you were showing?

A. Information we were giving the other naval ships?

Q. What information were you giving to other ships—you? I mean by "you" the Navy ships in the formation—that the Washington was there.

A. As I say,—

Q. I mean, that the Ruchamkin was there.

A. I was giving none that the Ruchamkin was there.

Q. And neither was any of the other vessels?

A. To the Washington?

Q. Yes.

A. I don't know about that. I was giving no information.

Q. Well, there is no light you could show that would say, "Here is another ship astern of us"? How would any Navy ship in that formation disclose that the Ruchamkin was back there, except by radio or—

A. You mean how would the Washington know that the Ruchamkin was there?

Q. Yes.

A. By the —

Q. How?

A. Well, the same way that she would know that any of the other ships in the formation was there—by seeing her, the ship, on the radar, or by seeing the lights.

Q. And unless she saw the Ruchamkin on the radar, or she saw the Ruchamkin's lights, she wouldn't know she was there, would she?

A. No; except at close range she could probably see the ship.

Q. But you knew the Ruchamkin was there?

A. Yes, sir.

Q. And the flagship knew she was there?

A. Yes, sir.

Q. And every ship in the Navy formation knew she was there?

A. Yes, sir.

Q. But you didn't regard it as your duty to warn the Ruchamkin or tell the Washington she was there?

A. No, sir.

MR. BRUSH: That is all.

Will you mark this last diagram made by the witness as McGlaughlin Exhibit 3.

* * * * *

Excerpts from Transcript of Hearing before Judge Bryan on September 12, 13, 1955.

(P. 61)

No. The Navy doesn't particularly care whether I win or lose this lawsuit. The Navy is very interested in having its officers conduct their business in the way in which they have since the Navy opened up without fear of anybody criticizing them or getting them up on the stand and asking them embarrasing questions based upon a misapprehended answer to a question which they had given at a previous proceeding.

Now, when we get around to our difficulty with Mr. Crenshaw, I think the answer is very simple. Mr. Crenshaw at this meeting we had over in Washington where he made the same argument and said you shouldn't go around through this procedure; you should do it straight down the middle; he said, Mr. McGovern says what my office has done in the Oregon-New Mexico case—there is one significance in this case and that case—we lost that case and we don't intend to lose this case.

* * * * *

(P. 62)

THE COURT: That is to make the witnesses available?

MR. MCGOVERN: Yes, sir.

* * * * *

(Pp. 63, 64)

Now the arrangements we had had with respect to the last group of witnesses that Mr. Crenshaw told about, they were the people who we expected to bring to the trial and found couldn't make it, and included both, primarily all persons in civilian life. As to those persons we were very careful to get their testimony declassified, to bring it along, and to show it to opposing.

Now he criticizes the amount of time he has to look at it. I am sure he has no more time to look at it than they have, than I have.

* * * * * *

(Pp. 66, 67, 68, 69)

THE COURT: How do you claim the privilege? Do you claim it in the affidavit or —

MR. MCGOVERN: No, Your Honor, we claim the same way an attorney does in the Lickman-Taylor sense.

THE COURT: How do you plead it here?

MR. MCGOVERN: We maintain it is privilege as a matter of law.

THE COURT: In your answer to the interrogatories?

MR. MCGOVERN: No, no, Your Honor; not answer to the interrogatories.

THE COURT: Where does it appear?

MR. MCGOVERN: I think it is in my brief.

THE COURT: It is in your brief?

MR. MCGOVERN: Yes. We had a system — the Court may remember it, which was the system used

before the Reynolds case which was for a formal claim of privilege by the head of the department.

THE COURT: Yes.

MR. MCGOVERN: That we have not done in this case because we did not understand we were getting to that particular part of the case. If that is a procedural defect in our record, I will be glad, very glad to satisfy it because the Navy at some time back said that the Navy said that the Secretary's Office was prepared to execute a claim of privilege.

THE COURT: How is the Court to understand, aside, of course, from accepting what you state orally that the Department is insisting upon a privilege?

COMMANDER BLOCHER. We have not been able to hear one word of what is going on.

MR. MCGOVERN: That is fatal, sir. Could you come around here, and Mr. HAYES, and Mr. BLOCHER, apparently there is a dead spot right back there. You haven't heard any of this disposition.

COMMANDER BLOCHER. I haven't heard any of your talk at all.

THE COURT: What I want to know is how is the Navy evidencing its claim of privilege here?

COMMANDER BLOCHER. I don't understand that the Navy has yet asserted a claim of privilege. It is my understanding that on this state of the pleadings it is the burden of the Texas Company to show good cause, and that is the question before Your Honor now.

THE COURT: Well, if the Court holds that it has shown good privilege, then do you tell me that if the Court holds that it has shown good cause, you tell me now that you then go to claim of privilege?

COMMANDER BLOCHER: Yes, sir; I would; that is, that that would be the next logical step. I don't know whether the Department at this point would claim privilege. I would imagine that it would, at least as to part of the records, that is, particularly the Court's findings and so forth.

MR. CRENSHAW: If Your Honor please, if the Department of the Navy intends to claim privilege at a date later than this and the Court holds back the decision for that, it would not matter whether the Court holds with us or not because it would be too late to use what we are asking for. Mr. McGovern has set out in the title of his brief that what the United States is claiming here is a conditional privilege which realistically viewed means that you have to assert good cause before we can get it.

Now I say we have asserted good cause. The United States, I think, is talking about something different, but that is our relative position. I don't believe that the United States should be able to go back to the Pentagon or wherever they might find a claim of privilege now and bring it up later. I think that they have had ample knowledge of this motion, and their whole position should be here today before the Court.

COMMANDER BLOCHER. I take it, if your Honor please, that this question of privilege has not been put before the Navy Department before.

THE COURT: Well, that is what we have been arguing here entirely.

MR. MCGOVERN: No, Your Honor, we have been arguing whether Mr. Crenshaw had shown sufficient good cause in view

THE COURT: You started out

MR. MCGOVERN: In view of the law.

THE COURT: As the first hurdle. Then we went to the question of whether or not it was privilege.

* * * * *

(P. 74)

Now all the authorities cited by Mr. McGovern boils down to one fact. There isn't any claim of privilege here. All it is is their saying that because of the nature of this record you should show more cause than you would ordinarily. Well, under discovery generally all you have to say is you have it, I want it, and that is cause. Now under this, it isn't sufficient cause to say that and we earnestly say that we have shown sufficient cause and that is what is determinative of our rights is whether we have shown cause.

* * * * *

(Pp. 87, 88)

COMMANDER BLOCHER: If Your Honor please, that testimony is classified until it is declassified. Nobody can express a willingness with which they can't carry out until after that declassification has been made. In other words, the procedure—

THE COURT: You have to start somewhere.

MR. CRENSHAW: This is the difficulty had here. Mr. McGovern says yes. Commander Blocher says no.

MR. MCGOVERN: I am talking about what as a lawyer I am willing to seek out of the Navy Department and Blocher, as a naval officer, is trying to say that he can't talk for the Navy Department until he actually sees it, and I think we are all being perfectly frank with the Court.

THE COURT: I think so, but I think what Commander Blocher overlooks is there has to be some time to start. We cannot just let it rest and so nobody has declassified it, and, therefore, nothing can be done about it.

* * * * *

(Pp. 89, 90)

THE COURT: No, wait a minute. You just give Mr. McGovern that list of the nineteen that you want. Then he can ascertain the willingness or unwillingness of the Government to produce those men, together with such parts of their testimony as deals with other than military secrets, and my present inclination now is to order that production because I think that follows the Reynolds case. I do not feel disposed to order the production of the whole transcript of the Board of Inquiry, but I think we ought to go as far as the Reynolds case has gone, and from what I mention, I think that is the course of the Reynolds case.

MR. CRENSHAW: We will give the names to Mr. McGovern. Now we will—something be done with those names—I will give them to him tonight. I will write them down and give them to him tonight.

Now this case begins in this courtroom two weeks from today. By what time would we have an answer? It would seem to me much simpler if the Court would say to the United States, you shall produce the testimony of those persons on the list of nineteen whose testimony is not classified now. Then they can go to their Navy Department with a court order. They can say the Court has instructed us to produce it, if it is not classified. Then we will be in a position to do some-

ing about it. This way it may be eleven out of four-
en days before anything will be done.

THE COURT: I think I can go as far as ordering
e production of these nineteen men.

MR. CRENSHAW: Of the men.

THE COURT: Of the men at such-and-such a time
or your examination, and I would suggest that they
e produced Friday of this week—Monday.

* * * * *

Pp. 96, 97)

THE COURT: But they want certain things in re-
pect to his personnel file.

MR. BRUSH: I am only reading what I know in
he motion. They have personnel records, medical
ecords and physical examination records on James
pton.

THE COURT: Want medical records? What else?
Will you read that.

MR. BRUSH: And the physical examination
ecords.

THE COURT: Medical records, physical examina-
on records, and what else?

MR. BRUSH: That is all they say. Personnel
ecords. I don't quite know what they mean by that.

THE COURT: How would that disclose anything
onfidential?

MR. BRUSH: Of course, the man's own personal
hysical examination, ordinarily we are not permitted
o give that out without instructions or his permission.

THE COURT: Well, how would you feel about do-
ng just what the Government is doing; that is, produce
he man for examination?

MR. BRUSH: Now, if the Court please, I would be very happy to produce Mr. Upton, but what Mr. McGovern has not explained to this Court is this, and this was a great to-do, about we were going to hide Mr. Upton. Mr. Upton is represented by an attorney in this case. He has sued the Texas Company. I shouldn't suppose that I can properly speak to Mr. Upton without being in the presence of counsel, and I certainly couldn't guarantee to produce him if he is no longer in the employ of the Texas Company.

I have tried to subpoena him and take his testimony in New York, and I have written his attorney advising him by registered letter that that is what we propose to do before this trial. I assume that his lawyer will produce him in this court because that is where his suit is pending, but the Texas Company has no control over that individual.

THE COURT: Well, he is before this Court.

MR. BRUSH: That is right; he is, and he is no client of mine, and he is not in the employ of the Texas Company, and those are the limitations.

THE COURT: What other witnesses?

MR. BRUSH: Now the mate, Mr. Riche, they want the same general papers.

THE COURT: Is he in it?

MR. BRUSH: He, and the mate and Cain are in the employ of the Texas Company, and we have by pretrial order agreed to produce them.

* * * * *

(P. 112)

THE COURT: Then I will strike what I said in reference to the taking of the deposition or the production of the witness to give his deposition on the motion

in respect to the motion of the Government. I was under the impression that it was asking for the witness.

* * * * *

Excerpt of Transcript of Hearing before Judge Bryan on June 2, 1954

(P. 19)

Now our exceptions are not on the ground of privilege. We are not claiming privilege. We are not claiming privilege for anything in this case. What we are trying to do is to say that, as the Supreme Court said in the Reynolds case, when we offered the Air Force men for examination by the plaintiff, there must be an adjustment between interest of litigants and the interest of the Government's security.

* * * * *

Excerpt from Deposition of Daniel J. Horgan, ODD, USS RUCHAMKIN

(P. 4)

Q. Now, you are the same Daniel Horgan who testified before the Court of Inquiry?

A. I am.

Q. And also before the Navy Board of Investigation?

A. I am.

Q. Now, there is testimony before the Navy Board of Investigation, which Mr. Brush and Mr. Crenshaw are looking at now. Have you seen that again this morning?

A. I have.

* * * * *

(Pp. 8, 9, 10)

Q. Now, where was the Rucamkin with reference to the other vessels in the formation at the time you took over the watch as Officer of the Deck?

A. We were approximately 10 to 15 miles astern, in back of the formation. We were maintaining this position, because we were ordered to do so. We had picked up a landing party and we were to rejoin the formation when they swung in towards the coast. When I took over the deck, we were on a course of 090 and we were not to join the formation until we had established our base course of 270, or approximately that course.

Q. When did you establish your base course of 270?

A. I would have to refer to the log, or something of that nature. I think it was around one o'clock, but I'm not too sure.

Q. This is the rough log (hands to witness)?

A. Approximately 0059. We changed course to 270, or we swung in various course changes to come to that base course of 270 about one o'clock a.m.

Q. Now, what was the situation at that time?

A. We were still about 8 miles in back of the formation, I would say; 8 to 10 miles. And we had not as yet received direct orders to assume our screening station. We were to be part of the screen in this Navy maneuver, and we had not as yet received orders to take our screening position. Therefore, we maintained our position, gradually decreasing the amount of distance between the main body and ourselves.

* * * * *

(Pp. 13, 14, 15)

Q. Had the screening vessels opened up to leave a hole or gap into which your vessel was going to go?

A. Yes. The screening vessel on our right hand side made a distinct movement, which was seen visually by me and by our right hand look-out; made a distinct movement to the right. And the screening vessel directly ahead of us, or a little bit off our port bow, made a distinct movement toward the left, which opened up the position for us to go into.

Q. Now, in the course of the Navy examination, which Mr. Brush and Mr. Crenshaw have, which you saw today, you were interrogated at length as to whether you had heard on the tactical circuit an order from the Commander of the Screen, Captain Persons, to the extreme left hand screening vessels, the Lloyd and Corry, to maneuver as necessary to avoid a stranger vessel, or merchant vessel? The precise word I'm not exact on. Do you remember that interrogation?

A. Yes, sir.

Q. Now, what do you have to say today with respect to that point?

A. I can remember having heard no message of that particular nature over any tactical circuit.

Q. Now, on your look-outs; did anyone check the look-outs to see whether they were working?

A. Yes, sir. The Captain was standing within 5 feet of the look-out on the port side, and I was standing within 5 feet the look-out on the right hand side or starboard side.

Q. Were they looking, or did they appear to you to be looking?

A. Yes, sir.

MR. MCGOVERN: Your witness.

CROSS EXAMINATION BY MR. BRUSH:

Q. Mr. Horgan, before starting out on this operation, had you attended any briefing or had you had sight of the operational plan or seascape under which this maneuver was being conducted?

A. Yes, sir.

Q. Well, it may not be clear from your answer whether you had attended a briefing or —

A. I had seen the operational order.

Q. You had seen the operation order. Do you know whether there was a copy of it on board?

A. Yes, sir; there was.

Q. Now, is it a fact that according to that operation plan the Ruchamkin was to perform a sort of a mission of picking up a landing party, or sortieing independently, and then scheduled to rejoin the formation as part of the screen at some hour during the evening; is that right?

A. That is correct, sir.

Q. In other words, this maneuver of picking up the landing party was sort of a slight diversion that you, as one of the screening vessels, were to perform?

A. That's correct, sir.

Q. Do you remember now about what time you were to join the formation, rejoin the formation?

A. I do not remember exactly the time, sir, but I think it was approximately 1:30, or 1 o'clock; but there was the presence of the formation to the South of us, which delayed that.

* * * * * *

(Pp. 16, 17, 18, 19)

Q. Now, did there come a time, then, when you approached the formation for the purpose of rejoining,

and then reported to someone that you were ready to rejoin them?

A. Yes, sir.

Q. And, about what time was that, and tell us in which direction the formation was proceeding at that time?

A. When we reported our presence, ready to join and assume our screening station, or ready to follow the directions of the flag, and ceased to maneuver independently, it was between 1:30 and 2 o'clock. We made our presence known to the flag, the Officer in Tactical Command of the Fremont, the flagship. The course of the vessels at that time was approximately 270, or a variation thereof—275, 265. We were definitely headed towards the beach.

Q. Towards the beach in a westerly direction?

A. Yes, sir.

Q. And, I take it, the Ruchamkin was somewhere behind the formation; is that right?

A. Yes, sir.

Q. Now, when you reported to the OTC, the Officer in Tactical Command on the Fremont, how did you report it, and did you receive the reply?

A. We received—I beg your pardon. We transmitted the message by blinker.

Q. I see.

A. And we received an acknowledgement of that message by the roger from the Quartermaster on the bridge of the Fremont.

Q. And do you remember now what that message was that you sent, as nearly as you can recollect?

A. Well, sir, to the best of my knowledge, I either made the message up or authorized its departure. Since the Captain was on the bridge, he did both. But,

to the best of my knowledge, I believe it was a movement report, and it stated that we had fulfilled our assigned mission and were now ready and prepared to discharge further duties at the direction of the Commander of the seascape operation.

Q. And, at that time, having sent that message, and being in that position, and being familiar, also, with the details of the operational plan to be carried out from that point on, did you then regard yourself as under the orders of the OTC, or the Officer in Command?

A. I would say, yes, sir.

Q. Did you thereafter attempt to convey that information as to your position and your readiness to take station to the Screen Commander?

A. We attempted to do so; yes, sir.

Q. Were you able to do so?

A. No, sir; we were not.

Q. Thereafter did you ever receive any messages from the Screen Commander directly?

A. Yes, sir; we did.

Q. And what were they?

A. We received a message from the Screen Commander to take station, to expedite taking station, and to continue to expedite taking station.

* * * * *

(Pp. 20; 21, 22)

Q. Now, is it a fact that under this operational plan there was provision for and you knew where you were going? That is, you didn't have to receive a separate order to proceed to some particular point; you knew where you would go, according to the plan? The plans specified what position you were to take; is that not right?

A. That's right, sir.

Q. And did you know that that would be, or can you tell us whether that would be on a comparatively straight course from the position in which you were at the time you reported you were ready to take station?

A. Yes, sir; it would be a straight course.

Q. And that that course would be parallel to and a specified distance, or an approximate distance, off the right hand side of the formation?

A. Yes, sir.

Q. When you got orders to proceed to take station, and you started to proceed to take station, and were under way, did you intend to make any changes of course before you reached that station?

A. No, sir.

Q. In other words, you intended, I take it, in carrying out the order to take station, to follow a comparatively straight line to that point?

A. Yes, sir.

Q. Now, can you tell us approximately what distance or how far off the formation that course, projected course, would carry you?

A. You mean our closest point of approach to the formation?

Q. Yes.

A. About a mile and a half.

Q. Mr. Horgan, its been called to my attention that in the Navy Board of Inquiry that you estimated that distance to be 1200 yards. I have no objection if you look over the statement to refrsh your recollection. (Hands to witness.) By the way, Mr. Horgan, for the record, perhaps, we should have the date on which you testified, or approximate date on which you testified.

before the Board of Inquiry. That is the date with respect to the collision.

A. It says a minimum of 1200 yards. Well, my recollection at that particular point was much better than it is now. I would say we were almost astern of the formation when we started to take our direct course to our screening station, and since our screening station was relatively in the center of the formation,—it wasn't exactly, it would be the second ship on the right hand side—we would have to pass rather close to the formation in order to reach that position.

* * * * *

(Pp. 29, 30)

Q. Yes. Now, have you ever had an experience in the Navy where being under orders say, of an officer like the Screen Commander, they have warned you or advised you of the presence of somebody around that didn't belong there, or perhaps the possibility of somebody being there who didn't belong there?

A. Yes, sir.

Q. Would you tell us about that? I'm trying to find out whether that is ordinarily the practice in the Navy, or whether you had some experience along that line.

A. Well, during this maneuver about which I was speaking a moment ago, the screen commodore did advise this ship, with whom the blips merged, of the presence of this other vessel, and the vessel acknowledged that he had him in sight.

* * * * *

(Pp. 31, 32)

Q. Of course, I take it, you now know, as a result of all these proceedings in the Court of Inquiry test-

mony, that the Washington was sighted visually some 20 minutes before the collision with you?

A. So I understand, sir.

Q. And that her course and speed were calculated and the c.p.a. solution reached, and the story is that that went out over the common circuits. Have you any knowledge or explanation as to why the Ruchmankin never received that information?

A. No, sir; I have no explanation.

* * * * *

(P. 39)

Q. I see. And during this period that you were on watch, did you notice whether the radar scope on the bridge was on a scale other than at 20 miles?

A. To my knowledge it wasn't, sir.

* * * * *

Excerpts from Deposition of Raymond B. Hirshman, Radar Operator, USS RUCHAMKIN

(P. 9)

Q. Did you use another range scale at any time?

A. Yes, sir, we shifted; the two mile scale.

Q. For what purpose did you shift to the two mile scale?

A. For tracking ourselves into position on the screen when we were approaching the main body and the screening station.

Q. Tell us so that we can understand just what it was that you did when you switched to the two mile scale and started to take ranges and bearings from the main body and the screen so you could get into the proper position.

A. Well, there is one switch you had to change, one notch, and we were getting ranges and bearings to the guide, I would say at least every thirty to forty-five seconds as we approached the main body; close contact with them. That was almost continuously, runs for, I'd say a half an hour before the collision.

* * * * *

(P. 10)

Q. How long did you give attention to the area between the guide and the screen commander?

A. Mostly taking our range and bearings off the guide and occasionally off the screen commander to see if he was on station.

Q. When you were looking at this area, did you at any time see a strange vessel come in?

A. Earlier in the evening we had concentrated on the whole area, but as we were approaching our screening station, we were relatively more interested in attaining our station than anything else. I'd say for about a half an hour we were maintaining mostly, getting the screen's position.

* * * * *

(Pp. 12, 13, 14, 15)

Q. When was the first notice that you had that there was a vessel was going to collide with you?

A. When it hit us.

Q. How close to where you were did she hit?

A. Well, she hit a little further aft, oh, I'd say maybe sixty feet further aft on the main level where I was.

Q. Was the blow sufficient to shake you?

A. Yes, sir, knocked me out of my seat.

Q. What happened to your set at that time?

A. Well, the power went out and we tried to get the emergency power on, and we were first concerned with our radios, and getting the message out that we were hit.

Q. Now I forgot to ask you, What was the minimum range of the radar that you were using, your estimate?

A. When it was working good, it was 350 yards.

Q. Minimum ranges means the distance within which the radar did not pick up things?

A. That is right.

Q. So that outside of 350 yards your radar, within the limits of the equipment, could have picked up any target coming from that area?

A. It should have; yes, sir.

Q. Did it?

A. Well, it picked up other contacts in the main body.

Q. Tell us about the other contacts in the main body.

A. I believe there was 16 or 17 other ships in that formation that night, and when we were working on the four thousand yard scale, 16 or 17 other pips out there. It was just a mass of confusion and you also have your minimum range on another ship there of approximately 350 yards also. If another ship came within 350 yards of a third ship, it would be merged together as one pip, and it was—we knew where the guide was, and that was about the only way we could differentiate these ships in the convoy and the screen. We knew where they should be and that is what we were trying to pick them up at.

Q. Now about how long would the pip appear to be, of the say the ship in the main body which was closest to you?

A. How long was it?

Q. Yes.

A. Well, I'd say on that scope, that on a thousand yard scale, it would be about thirty degrees and you would have a fairly sharp echo on it. In fact, you would have a very sharp echo when he was in five or six hundred yards, which was probably close—the ship probably was—I don't recall exact range it was at the time, being a big ship, would give you a larger pip also.

Q. Were you getting a good echo off that ship?

A. Yes, we were.

Q. Would that ship have masked any smaller, lower ship which was behind it?

A. Yes, it would also mask bigger ships too.

Q. The closer it is to you, the more mask?

A. There also could have been sea return. I don't recall what the sea conditions were that night.

Q. In all the time that you have considered this case, have you had any views about why it was that your scope didn't pick up the tanker before she did?

A. Well, I can't see any reason why it didn't, unless it was, just came in at a certain angle, passed the other ships within—too close, and just had a merged plot, and I believe we had picked it up earlier in the evening and had a course and speed on it, and the bridge had given some word to either disregard it or scrub it, or something, and also they were more concerned with getting on stations, since they were steaming, I believe, blackout that night. Also seemed to be

the policy that they were more worried about getting on station at the right time.

* * * * *

(Pp. 19, 20)

Q. What I am trying to get at, would you give it at the same time to your plotter and to the bridge, or would you stop the antenna twice?

A. Well, if they would coincide, I would give it to them at one time, but if there be two different—

Q. Did you volunteer any range and bearings to the bridge?

A. I believe I was when we were getting in pretty close to the main body.

Q. What do you mean by pretty close? How many yards?

A. I don't recall the exact yardage, but if the guide was, say, fifteen hundred yards away and it was a ship in between us, and the guide, he'd be in about seven, eight hundred yards, we'd be steaming up alongside of him also.

Q. Were you coming that close to the formation on this evening?

A. I believe so.

* * * * *

(Pp. 27, 28)

Q. I believe earlier you said that you were giving ranges and bearings then to one of these two sources every thirty-five or forty seconds?

A. That is about correct; either that, either the guide or the closest ship on our port side.

Q. If you were giving ranges and bearings at that frequency, would that render your set practically inoperative as a search set?

A. It would, to the fact that you'd no sooner get it on one scale than you'd have to shift back and stop your antenna and focus it in.

* * * * *

(P. 37)

Q. As I remember you said that most of your attention was directed to station taking.

A. That is right.

Q. Rather than your general search activity. Who directed your attention in that direction?

A. Well, the constant requests for ranges and bearing to the guide mad it almost impossible to concentrate on anything else.

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JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM 1956

No. ~~1007~~ 172

THE TEXAS COMPANY,

Petitioner,

v.

UNITED STATES OF AMERICA as Owner of the USS. *Rachamkin* and Ten Other Naval Vessels of the United States,

and

EVELYN ECKERT, Administratrix of the Estate of EDWARD JAMES ECKERT, JR., Deceased, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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Supreme Court of the United States

OCTOBER TERM 1956

No. .....

THE TEXAS COMPANY,

Petitioner,

v.

UNITED STATES OF AMERICA as owner of the USS *Ruchamkin* and ten other naval vessels of the United States,

and

EVELYN ECKERT, administrator of the estate of EDWARD JAMES ECKERT, JR., deceased, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Petitioner, The Texas Company, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, reported in 241 F. 2d 819 and 1957 A. M. C. 201 (Appendix p. 42). That Judgment affirmed in part and reversed in part two decrees, one final and one interlocutory, entered in the admiralty by the United States District Court for the Eastern District of Virginia in accordance with its opinion. The District Court's opinion which it adopted as its findings of fact and conclusions of law, is reported in 141 F. Supp. 97, also in 1956 A. M. C. 1245 (Appendix p. 29). The Court of Appeals remanded the case to the District Court for further proceedings not inconsistent with its opinion.

Jurisdiction.

The judgment of the Court of Appeals was entered on January 25, 1957. A timely petition for rehearing was denied by order of the Court entered March 11, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254 (1).

Questions Presented.

All suits involved in this case arose out of a collision on the night of November 14, 1952, about fifty-five miles off Cape Henry, Virginia, between the petitioner's tanker *Washington* (en route from a Gulf port to Philadelphia along the established coastal shipping lanes) and the destroyer USS *Ruchamkin*, one of a task group of eleven naval vessels operating as a unit, occupying about twelve square miles of ocean and engaged in the peacetime practice of an amphibious maneuver called "Operation Seascape".

The District Court, sitting in Admiralty, after a full trial in open court, found the commanding officer of the colliding *Ruchamkin*, and the officers in command of the naval formation as a whole who were stationed on board the flagships *Fremont* and *Hollis*, guilty of negligence that proximately caused the collision. The tanker *Washington* was found free from fault. The United States was held liable under the Public Vessels Act and, upon the request of government counsel for a determination of the point, the District Judge found liability on *in rem* principles against three of the eleven naval vessels of the task group, the *Ruchamkin*, *Fremont* and *Hollis*.

The Court of Appeals affirmed the finding of negligence against the three naval officers, but without pointing out or even alluding to the question whether there were clear errors in the findings below, it reversed the exoneration of the tanker and the holding of the flagships *Fremont* and *Hollis* to liability on *in rem* principles. By imposing liability on the tanker, the opinion of the Court of Appeals rendered pertinent the question of *in rem* liability on the part of the naval vessels because of the admiralty rule respecting division of damages.

The decision of the Appellate Court treats naval vessels differently from those which are privately-owned, despite the intent of Congress to the contrary, expressed in the Public Vessels Act. By imposing liability on the tanker, the decision in effect holds that a merchant vessel on her regular course in an established shipping lane must keep out of the way of a negligently performed naval maneuver. The decision reserves to the Navy the exclusive use of a large area of the high seas, and imposes on the merchantman a burden not contemplated by the Statutory Rules of Navigation. In reaching its decision, the Appellate Court not only reversed the findings of the District Court, but substituted new findings of fact which, we submit, are not justified by the record.

We therefore ask this Court to consider two questions which are of vital importance to merchant shipping.

I.

Are not the flagships *Fremont* and *Hollis* liable *in rem* under the Public Vessels Act when the officers in command of the naval task group, stationed on their respective bridges and using their respective communication facilities, were admittedly guilty of negligence that proximately caused a naval vessel under their command (the *Ruchamkin*) to collide with the tanker *Washington*?

A denial of such *in rem* liability in respect of naval vessels is contrary to the broad interpretation given the Public Vessels Act by this Court in *Canadian Aviator, Ltd.* v. *United States*, 324 U. S. 215, is also in conflict with the decision of the Court of Appeals for the Second Circuit in *United States* v. *The Australia Star*, 172 F. (2d) 472, and is contrary to the basic principle of *in rem* liability under the maritime law as expressed by this Court in *The Eugene F. Moran*, 212 U. S. 466.

II.

May a United States Court of Appeals substitute its own findings of fact for those of the District Court sitting in Admiralty, based on the testimony of witnesses heard by him in open court, without a determination that the findings below were clearly erroneous?

The action of the Court of Appeals in this matter is in direct conflict with the decisions of this Court in *McAllister* v. *United States*, 348 U. S. 19, *United States* v. *U. S. Gypsum Co.*, 333 U. S. 364, and *United States* v. *Oregon State Medical Society*, 343 U. S. 326.

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Statement of the Case.

The Facts.

Shortly before 2:00 A. M. on November 14, 1952, the watch of the tanker *Washington* was set and all her navigation lights were burning brightly as she steamed along the coast to Philadelphia. Since midnight, when the Second Mate took over the watch, lights of other vessels were observed from port to starboard. Most of these lights were white and to starboard. They extended along the horizon much like the lights of a village, appearing to be some distance off. From time to time, a check of the lights was made on radar, but none appeared to be within five miles, and, as the tanker proceeded, the bearing of the successive lights drew aft.

Certain of these white lights, it was learned subsequent to the collision, were displayed by two flotillas of naval vessels engaged in peacetime practice maneuvers off the coast. One of the flotillas was the group performing operation "Seascape" and the other an aircraft carrier group. Other lights observed were evidently exhibited by numerous unassociated merchantmen traversing that busy area.

The vessels comprising formation "Seascape" necessarily maneuvered in concert much as a company of soldiers on a drill field. To insure their unity of movement, a naval officer called the O. T. C. (Officer in Tactical Command) was stationed aboard the USS *Fremont* with his staff of some fifty officers and men. That vessel was designated as flagship and occupied the central position in the formation around which other vessels were stationed according to the written plan. Another officer, subordinate to the O. T. C. and designated Screen Commander, was stationed with his staff

aboard the USS *Hollis*. He directed the movements of the five destroyer type vessels, comprising the anti-submarine screen, stationed in an arc between two and three miles ahead of the circular formation of heavy ships.

At the time of the collision, four of the destroyers were on their assigned stations, but the fifth, the *Ruchamkin*, was returning thereto from a reconnaissance mission.

The O. T. C. and the Screen Commander issued orders to all ships respecting courses and speeds to be followed by the formation as it navigated in the area. Through the radios and radars aboard their flagships, these officers constantly observed the other ships in the formation to insure that their orders were being promptly obeyed and that all ships maintained their assigned stations. Although each vessel in the formation was steered by its individual captain, he was required at all times to follow the orders of the flag officers unless his vessel was in immediate danger.

In the course of exercising operational control of this seagoing juggernaut, the Screen Commander ordered, and the O. T. C. allowed, the *Ruchamkin* like a hidden missile to come up from behind and pass the formation on its starboard side at a speed of over four times that of all other vessels of the formation which had been ordered by the O. T. C. to slow down to permit the *Washington* to pass ahead of the group from port to starboard. Obscured from the tanker by the numerous lights of the intervening naval vessels, until less than a thousand yards apart, and unmindful of naval radio messages concerning the *Washington*'s presence, the *Ruchamkin* collided with the tanker.

A more detailed statement of the circumstances leading up to and surrounding the collision may be found in the opinion of the District Court. See Appendix, page 29.

Action of the Courts Below.

The District Court found that the tanker had no warning that she was approaching a task group, nor any opportunity to defer to it; that once inside, there was nothing for her to do but continue past the heavy ships in the manner contemplated by the O. T. C. as he slowed his formation to give way to her; that while she was within the task group the lights of the *Ruchamkin* were not distinguishable from those of the vessels in the intervening formation; that the collision occurred within a minute or two after the *Washington* and *Ruchamkin* more or less simultaneously sighted one another and that neither had sufficient opportunity to avoid the other after such sighting. The District Judge accordingly exonerated the tanker.

The *Ruchamkin* was declared to be at fault because of the failure of her officers to receive or regard the advice given over the naval voice radios concerning the tanker's progress. Although this ruling was sufficient to dispose of the case in view of the tanker's innocence, the District Judge also decided the liability of the *Fremont* and *Hollis* because the Government requested a ruling on that issue. He declared that the Screen Commander was guilty of negligence that contributed to the collision when he issued the order to the *Ruchamkin* to "expedite" across the tanker's course at a time when all of the other naval ships had been ordered by the O. T. C. to slow. For acquiescing in so dangerous an order, the O. T. C. was also held to be at fault. Because of the fault of the tactical commanders, (stationed aboard them) the District Judge then declared that the flagships *Fremont* and *Hollis* should be held liable *in rem*.

In exonerating the *Washington*, the District Judge quoted the testimony of the officers of the *Ruchamkin*

and other naval officers who were on the scene to the effect that the *Ruchamkin* and the *Washington* were obscured from one another by the "cargo lights, porthole lights, and mast lights, or what have you, from the formation" until too late to avoid one another. Since neither vessel had an opportunity to detect or to observe the movement of the other in sufficient time to navigate with respect thereto, the District Court concluded that the rule of Special Circumstances[1] governed rather than the Starboard Hand Rule[2] as contended by the Government. Under the Rule of Special Circumstances which the District Judge held applicable, he concluded that the direct, proximate cause of the collision was the:

> "* * * Navy's breach of the special circumstances mandates of the Rules while the *Washington* was in the midst of the flotilla. 33 USCA 112, 121." (141 F. Supp. 97, 101).

The Court of Appeals affirmed the negligence of the *Ruchamkin*, the O. T. C. and the Screen Commander but reversed the exoneration of the *Washington*. The faults charged to the *Washington* were: (1) that the tanker should have distinguished the navy white lights from other white lights visible to her at the same time; (2) that the Starboard Hand Rule and not the rule of Special Circumstances applied; (3) that the tanker was at fault for failing to avoid vessels with which she did not collide; (4) that the tanker should have blown her whistle to a vessel with which she did not collide so as to warn another vessel which she could not at the time see, and (5) that the tanker's mate should have espied the *Ruchamkin*. None

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[1] Art. 27, 29 International Rules; 33 U. S. C. Sec. 112, 121. see p. 58

[2] Art. 19 International Rules; 33 U. S. C. Sec. 101. See p. 57

of these charges were supported by the evidence and it is typical to note that the last was in direct conflict with the finding by the District Court that:

> "There is virtual unanimity among all the watch officers that so numerous were the lights that no particular ship was distinguishable. Even the screen commander lost sight of the *Washington* as her lights merged with the main body's. Nor were they separable on the radarscope. With so many pips on the radarscope, the picture was like 'a cluster of grapes' and individual identification almost impossible." (141 F. Supp. 97, 103).

When the Court of Appeals found the *Washington* also to blame, the question of *in rem* liability of the *Fremont* and *Hollis* became pertinent because of the rule in admiralty that damages are divided on the basis of the number of vessels guilty of contributing fault. See *The Eugene F. Moran*, 212 U. S. 466. The Court of Appeals was divided on the issue of *in rem* liability of the *Fremont* and the *Hollis*, the majority ruling that the damages should be equally divided between the *Ruchamkin* and the *Washington*. Two of the three judges denied assessment of fault *in rem* against the flagships despite confirmation of the negligence of the flag officers stating:

> "Here the *Ruchamkin* was not subject to the control of either the *Fremont* or the *Hollis*, or the Officers of those vessels, but of the Task Commander and the Screen Commander who had taken stations on them, but for whose orders those vessels were no more responsible than if the officers had been stationed on other vessels or, as has been said, than if the officers had been issuing the orders from land or an aeroplane." (241 F. 2d 819, 825).

As will be seen, this statement completely ignores the evidence. These officers could not and did not navigate their juggernaut from land or an aeroplane. They were stationed aboard their flagships, not on other vessels.

Reasons for Granting the Writ of Certiorari.

The decision of the Court of Appeals as to *in rem* liability in effect suspends the tactical commanders in the air above their flagships, totally immunizing these vessels from their faults, although grave. If allowed to stand, this opinion creates a rule for naval vessels different from that applicable to private merchantmen simply because of the Navy's staffing practices. This, we submit, is contrary to the intent of Congress as expressed in the Public Vessels Act,* and deprives merchant shipping throughout the world of the benefits of that long established doctrine of *in rem* liability in admiralty.

Important as the first question may be, the Court of Appeals has violated the clear mandate of this Court to reach it. By simply discarding the well reasoned and abundantly supported opinion of the District Court the Court of Appeals has demonstrated the wisdom of and the need for the decisions of this Court in *McAllister* v. *U. S.*, 348 U. S. 19; *U. S.* v. *U. S. Gypsum Co.*, 333 U. S. 364 and *U. S.* v. *Oregon State Medical Society*, 343 U. S. 326, which state that an appeal in Admiralty is not *de novo*, and that the opinion of the Trial Court may not be set aside unless clearly erroneous. This rule recognizes the limitations

* H. Rep. No. 913, 68th Cong., 1st Sess., at p. 3; S. Rept. No. 941, 68th Cong., 2nd Sess., at p. 3; see also H. Rept. No. 1301, 66th Cong., 3rd Sess., Feb. 7, 1921, see especially letter of the Acting Secretary of the Navy, p. 8; Hearings before Committee on Judiciary of the House of Representatives on H. R. 9075, 68th Cong., 1st Sess., May 21, 1924, pp. 6, 19, 21, 23, 28, 30.

inherent in appellate proceedings and is eminently sound, but what recourse is there to the litigant if the Court of Appeals ignores these decisions? Only certiorari can correct this error.

As to the Question of In Rem Liability

(a) The decision of the Court below is in conflict with the decisions of the Second Circuit in *United States* v. *The Australia Star* and of this Court in *Canadian Aviator Ltd.* v. *United States.*

The liability here urged against the Naval vessels arises under the Public Vessels Act. As to the *Ruchamkin*, her fault resulted directly in her collision with the *Washington* and the Court of Appeals held her liable *in rem*. With respect to the *Fremont* and *Hollis*, the fault of their flag commanders did not result in any physical contact by those vessels. The fault which petitioner claims should be attributed to them did, however, contribute to the collision and it consisted of the negligence of their tactical commanders in their control of or failure properly to control the *Ruchamkin*. The Court of Appeals refused to hold the *Hollis* or the *Fremont* liable because the negligent flag officers were not the regular commanders or masters thereof although physically stationed thereon.

The liability of a public vessel for causing a vessel under its control to collide with a fixed object was established by this Court in *Canadian Aviator Ltd.* v. *United States*, 324 U.S. 215 (1946), where a P. C. boat negligently directed a merchant vessel onto a sunken wreck during their approach to Delaware Bay. The same doctrine was later applied by the Court of Appeals for the Second Circuit to a public vessel which caused a vessel under its control to collide with a third vessel. See *United States* v. *The Australia Star*

(the *Hindoo*), 172 F. 2d 472. There another P. C. boat was escorting a government-owned freighter (the *Hindoo*) and failed to warn its escort or the approaching *Australia Star* of the danger of collision with the latter. The Court of Appeals for the Second Circuit *held the* P. C. *boat liable* for the collision saying:

> "The escort's commander was aware of the danger to his escortee and of his own duty and authority to take measures to avoid it. But aside from the abortive attempt to signal the *Australia Star* and the directing of his searchlight on the *Hindoo*, at the last minute, he did nothing to avoid this collision. In our opinion this was negligence which contributed to the disaster. See Petition of Anthony O'Boyle, Inc., 2 Cir., 161 F. 2d 986." (172 F. 2d 472, 476).

In this case the majority of the Court of Appeals for the Fourth Circuit has refused to follow these two cases although it recognizes their authority. The District Judge and Judge Soper in his dissent from the majority opinion state that in their opinion the rule of the *Canadian Aviator* and the *Australia Star* should apply.

Judge Bryan said—

> "* * * the tactical officer was on board at the direction of the owner; the vessel was furnished him by the owner for his tactical duties. There is nothing inequitable in holding the owner, and the ship it provided for him, responsible for the tactical officer's conduct."

Judge Soper said:

> "In my view the flagships as well as the *Rockaulin* should be held liable for the collision. They furnished the necessary stations for the Task and Screen Commanders who controlled the whole operation.

> they supplied the means and the men by whom the movements of the *Buchanan* were directed and hence were participants in the accident. See United States *v.* Australia Star, 2 Cir., 172 F. 2d 472; Canadian Aviator *v.* United States, 324 U. S. 215; Publicover *v.* Alcoa S. S. Co., 2 Cir., 168 F. 2d 672, 678. On this point I am in accord with the conclusions of Judge Bryan as set out in his opinion in the District Court." (241 F. 2d 819, 826)

It is submitted that Judge Soper and the District Judge Bryan are right and that the majority of the Court of Appeals is wrong in attempting to distinguish this case from the two cases cited. As will be seen, there is no distinction at all in principle between the instant case and these authorities. The claimed distinction is tenuous and is not supported by the facts. In reality the opinion of the Court of Appeals directly conflicts with the Canadian Aviator and the Australia Star.

Judge Parker in his opinion below said that the *Buchanan* was not under the control of the *Fremont* or the *Hollis* or the officers of those vessels, but of the task and screen commanders physically stationed aboard them. He concedes that those flagships would be liable if the O. T. C. and Screen Commander were regular "officers" of their flagships— but he decided that they were not. He said that they were not any more attached to those vessels than if they had been on land or in an aeroplane. This opinion is not only wrong but it makes it impossible to hold a Navy flagship liable for a tactical commander's admitted negligence unless he is also the regular ship's captain. This decision ignores the evidence in the case and if allowed to stand would greatly restrict the liability of Naval vessels under the Public Vessels Act. The District Judge commented on this point in the following language:

"Again, the argument of the Government would vitiate the intent of the Public Vessels Act. Its intendment is to render the United States suable and answerable for a want of care on the part of its authorized personnel in their acts upon its public vessels. Canadian Aviator *v.* United States, 1945, 324 U. S. 215, 224. In the present instance the commodore and the screen commander were certainly lawfully aboard and did, or failed to do, that which was within their authority. In these circumstances, the Act considers their conduct to be their ships'. Indeed, they each had the power to control the movements of the very ships that carried them. Under the Public Vessels Act the liability of the United States is traced through the ship, and if the tactical officer's negligence is not to be ascribed to the ship, then any liability of the United States for the negligence of such officers, no matter how grave, would be put in doubt" (141 F. Supp. 97, 104).

(b) It is a fundamental of Admiralty law that the vessel is answerable for the fault of those lawfully aboard.

The personification of the vessel itself as the wrongdoer is a basic principle of American Maritime law. In *Ralli* v. *Troop*, 157 U. S. 386, 403, this Court said:

"* * * the vessel, in whosoever hands she lawfully is, is herself considered as the wrongdoer, liable for the tort, and subject to a maritime lien for the damages."

See also, *The Brig Malek Adhel*, 2 How 210, 233-237; *The China*, 7 Wall 53, 68; *The Palmyra*, 25 U. S. 1; *The Siren*, 74 U. S. 152, 165; *The John G. Stevens*, 170 U. S. 113, 120, 123; and *The Barnstable*, 181 U. S. 464. Admiralty Jurisdiction of Late Years, Chas. M. Hough, 37 Harvard Law Rev. 529, 541; The Law of Maritime Liens, Griffith

Price, pp. 6-9, 115, 118, *The Eugene F. Moran*, 212 U. S. 466, *Tucker* v. *Alexandroff*, 183 U. S. 424.

This doctrine is the foundation of the decision of this Court in *Canadian Aviator* v. *U. S.* and the decision of the Court of Appeals for the Second Circuit in *United States* v. *The Australia Star* (the *Hindoo*), *supra*. It should not be limited by such a tenuous and unrealistic distinction as that relied upon below.

During World War II the concept of amphibious naval operation underwent a tremendous growth. Today groups of vessels issue forth almost daily from the various Naval installations. They navigate as a coordinated unit in a prescribed formation. In order to achieve this singleness of action an officer is designated to control the movements of all vessels present. Sometimes he is the senior ship master present and sometimes he is a specially assigned staff officer. In either case, his duties are the same. If he is negligent and through such negligence he causes another of his vessels to damage some third ship or object, the question of liability of his flagship arises. Under the doctrine enunciated below, liability would exist if the man was the senior shipmaster, but it would be denied if he were a specially assigned staff officer. Such a distinction is contrary to *The China*, 7 Wall 53.

(c) The tactical commanders were necessarily aboard their flagships.

In the instant case, the task group commander went aboard the *Fremont* prior to sailing with a staff of some fifty officers and men. He took over the communication facilities of the flagship as well as its operational nerve center (the Combat Information Center—CIC—where the ship's voice radios and radars are concentrated). This officer directed the movements of each of the eleven Naval

vessels, including the *Fremont* and was charged with overall responsibility for the successful execution of the operation. The Captains of the several vessels simply transmitted the detailed helm and engine orders necessary to carry out the O. T. C.'s directives. He or his designated representatives were at all times on duty on one of the bridges of the *Fremont* and the maneuvering orders to each of the vessels in the formation were issued over the *Fremont's* facilities.

The screen commander and his smaller staff were stationed aboard the *Hollis*. They also took over the CIC and communication facilities of that vessel. This officer was, under the Task Group Commander (O. T. C.), in charge of the escort or screening vessels of the formation, including the *Hollis*. He directed their navigation and in general maneuvered them so that whatever way the group as a whole might turn, the ships under his command would remain in front as a protective screen. It was through the communication facilities of the *Hollis* that the fateful order to the *Rachamkin* to proceed to station and "expedite" were issued. Here again, the individual destroyer captain operated his vessel within the limits set by the screen commander.

Both of the flag officers had, and exercised, the power to control the navigation of the vessels under their command, including the flagships on which they were stationed. This had to be from a duty station located on one of the ships within the group.

Not only did these officers control the movements of all the ships in the group, but, under the dictates of the U. S. Navy regulations, they were also responsible for their safety. The fact that each vessel had a commanding officer aboard who was also responsible for the safety of the vessel (as any subordinate merchant ship officer or crew member might be) did not reduce the responsibility of the tactical or

screen commander, nor did it isolate them. This dual relationship was well expressed by Admiral C. W. Nimitz, Commander-in-Chief of the U. S. Pacific Fleet, during part of World War II in Volume 82, No. 1, Pages 83, 86 (January 1956), of the United States Naval Institute Proceedings. There he dealt with this problem of dual control as related to efforts to safeguard formations of vessels:

> "The safety of a ship against perils from storm, as well as from those of navigation and maneuvering, is always the primary responsbility of her commanding officer; but this responsibility is also shared by his immediate superiors in operational command since by the very fact of such command the individual commanding officer is not free to do at any time what his own judgment might indicate. * * *.
>
> "It is here that the responsibility rests on unit, group, and force commanders, and that their judgment and authority must be exercised. They are of course the ones best qualified to weigh the situation and the relative urgency of safety measures versus carrying on with the job in hand. * * * More than this, they must be conscious of the relative inexperience in seamanship, and particularly hurricane seamanship, of many of their commanding officers, despite their superb fighting qualities. * * *.
>
> "It is most definitely part of the senior officer's responsibility to think in terms of the smallest ship and most inexperienced commanding officer under him. * * * The very gallantry and determination of our young commanding officers need to be taken into account here as a danger factor, since their urge to keep on, to keep up, to keep station, and to carry out their mission in the face of any difficulty, may deter them from doing what is actually wisest and most profitable in the long run." (p. 86).

Thus, the captains of the various vessels and the group and screen commanders worked together to accomplish the assigned mission. Together they directed the movements of the several naval vessels, including the *Fremont* and *Hollis*. It is completely contrary to the undisputed evidence in this case to hold, as did the Court of Appeals, that the tactical officers had no connection with or control over their flagships.

These men were aboard their flagships at the order of the common owner and for the good of the common venture. They controlled the navigation of all the ships, including their flagships. The owners had the same right of correction over their errors as over the mistakes of the commanding officers. They were charged by the United States Navy Regulations with the duty of safeguarding the vessels under their command and this duty was not diluted one whit by the fact that the subordinate commanding officer of the individual ships also had the duty of safeguarding his ship. These things are the very basis of *in rem* liability. See *The China*, 7 Wall. 53, 68.

There is no basis in fact or logic for saying, as did the Court of Appeals, that their flag commanders were not "officers" of their vessels within the meaning of *Canadian Aviator* and *Australia Star* cases.

(d) The authorities cited by the Court of Appeals are not apposite.

The case of *Publicover* v. *Alcoa Steamship*, 168 F. 2d 672, upon which the Court of Appeals so heavily relies to support its tenuous distinction is really not in point. In that case the same man was master and commodore; his duties as commodore were imposed upon him by another than the owner of his vessel; and no negligence of the

commodore was established. It was because of the second and third of these factors that the Court of Appeals for the Second Circuit refused to hold his flagship liable. In the instant case the master and flag officer were placed aboard by the owner, and negligence on the part of the flag officer has been found by both courts below.

How can the majority of the Court of Appeals cite the *Publicover* as authority for their conclusion that liability should not follow negligence of a flag officer unless he is also master of the vessel, when in that case the same man did serve in both capacities but liability was denied for other reasons?

If the *Publicover* is construed to hold that *in rem* liability cannot be imposed unless the same man holds all vestiges of control over the vessel, it is contrary to *The China* where the vessel was held liable for the fault of the compulsory pilot. We submit that if *The China* is still law, liability *in rem* must follow if anyone lawfully on board a vessel and having authority commits a negligent act of omission or commission through the ship or its appurtenances causing damages to a third party.

The English authorities cited by the Court of Appeals[1] have the same factual distinction as *Publicover*, *supra*, and are also to be differentiated in that they enunciate the British procedural concept of *in rem* liability rather than the American doctrine of personification of the vessel as the wrongdoer. See Griffith Price—Law of Maritime Liens, p. 118.

For these reasons, the majority opinion of the Court of Appeals is, we submit, clearly erroneous and contrary to decisions of this Court and other U. S. Courts of Appeal,

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[1] The Glaucus and City of Florence, 1948 Law Reports (Eng.) Probate Division 95; The Sobieski, 1949 Law Reports (Eng.) Probate Division, C. A. 313.

particularly in the *Canadian Aviator* and *Australia Star* cases and should be reversed.

As to the Question of the Court of Appeals' Review of the Case.

(a) The scope of review by a Court of Appeals has limits defined by this Court.

This petition involves the appeal of an admiralty collision case that was tried to the District Court sitting without a jury. The scope of review of the trial court's decree in such cases is defined by Mr. Justice Minton in *McAllister* v. *United States*, 348 U. S. 19, 20 (1954), but was not followed in this case.

> "* * * In reviewing a judgment of a trial court, sitting without a jury in admiralty, the Court of Appeals may not set aside the judgment below unless it is clearly erroneous. No greater scope of review is exercised by the appellate tribunals in admiralty cases than they exercise under Rule 52(a)[1] of the Federal Rules of Civil Procedure. (Citing cases)."

Although this rule of review may be something of a change for the Courts of Appeal from the old trial *de novo*, it has been very clearly stated in other earlier opinions of this Court. *United States* vs. *U. S. Gypsum Co.*, 333 U. S. 364, 395 and *United States* vs. *Oregon State Medical Society*, 343 U. S. 326, 339 where emphasis was placed upon the opportunity of the trial judge to observe and judge the credibility of the witnesses. This particular element of the trial in this case, especially considering the important witnesses who testified in open court, was a valuable factor in the decision of the trial judge.

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[1] See Appendix, p. 59.

In a recent decision of the Court of Appeals for the First Circuit, in *The Texas Company v. R. O'Brien & Co. Inc.*, 242 F. 2nd 526 that court had occasion to give particular attention to this question stating:

> "• • • Insofar as such action may have been bottomed on the principle that an admiralty appeal was a trial *de novo*, this is no longer law. The present admiralty rule is that findings are not to be reversed unless 'clearly erroneous', comparable to Fed. Rules Civ. Proc. 52(a) 28 U. S. C., McAllister *v.* United States, 348 U. S. 19 (1954). Some courts have held Rule 52(a) not to apply where the findings below were based upon stipulated or undisputed subsidiary facts. We have not." (p. 529).

This case particularly is one where the rule should have been followed.

(b) From a factual standpoint this was not a simple case.

The evidence respecting the circumstances of the collision involved the many details of the navigation of eleven Naval vessels operating as a unit, somewhat like a juggernaught at sea. The intimate interrelation of the ships in the formation and the coordination of the complicated radio and radar communication between them; the silent yet controlling factor of Navy regulations and training that guided the conduct of the Navy personnel; the motives, movement and performance of this complicated exercise that took weeks of preparation and required the presence of trained personnel from Naval units abroad—all were reflected in the testimony of the key officers who were brought from various places on the globe to testify in person at the trial. At least 19 fact witnesses, including practically all of the watch officers of the *Fremont, Hollis,*

Ruchamkin and *Washington*, testified in person before the District Judge. Extensive documentary evidence from all ships, not to mention the many depositions of witnesses who could not attend the trial in person, were thoroughly examined and considered by the careful Trial Judge. The meticulous opinion, amply supported, reflects the excellent craftsman.

Because of the inherent nature of the appellate process, the review of the case by the Court of Appeals was restricted to its consideration of the brief (with appendix) and reply brief by each of the parties and an oral argument of approximately one and one half hours each for appellants and appellee.

Despite this limited presentation, and without declaring or inferring that the opinion of the District Court did not have a basis in the evidence, or was "clearly erroneous", the Court of Appeals undertook to rewrite the facts and the inferences deducible therefrom. This was a wholesale revision—a change in the whole fabric of the case. The scope of this revision may be seen by a listing of the findings which were set aside and the conclusions which were reversed.

(c) Factual Findings of the District Court That Were Set Aside.

1. Basic fact: Were the lights of the Naval vessels recognizable to the tanker's mate as naval vessels operating in unison under a single command?

   Holding: District Court—No.
   Court of Appeals—Yes.

2. Basic fact: Were the lights of the *Ruchamkin* distinguishable to the watch on the *Washington*?

Holding: District Court—No.
Court of Appeals—Yes.

3. Basic fact: Did the *Capricornus* obscure the *Ruchamkin* from the *Washington*?

Holding: District Court—Yes.
Court of Appeals—No.

4. Basic fact: Was the deposition testimony of the tanker's look-out Upton credible in view of the conflicting live testimony of the Naval officers and the tanker's mate?

Holding: District Court—No.
Court of Appeals—Yes.

5. Basic fact: Was there sufficient time for the vessels to maneuver under the starboard hand rule after the two ships were mutually disclosed one to the other?

Holding: District Court—No.
Court of Appeals—Yes.

6. Basic fact: Were the *Washington* and *Ruchamkin* in sight of one another so as to require a whistle-signal for a course change by the tanker?

Holding: District Court—No.
Court of Appeals—Yes.

7. Basic fact: Was the collision between *Washington* and *Capricornus* avoided only by the slowing of the formation?

Holding: District Court—No.
Court of Appeals—Yes.

8. Basic fact: Were the task group and screen commanders "officers" of their flagships?

Holding: District Court—Yes.
Court of Appeals—No.

9. Basic fact: Did the *Washington* have effective warning of the maneuvers of this flotilla in the area?

Holding: District Court—No.
Court of Appeals—Yes.

10. Basic fact: Did the *Washington* have an opportunity to pass behind or astern of the formation?

Holding: District Court—No.
Court of Appeals—Yes.

11. Basic fact: Was there time for effective engine movement by either vessel after first sighting one another?

Holding: District Court—No.
Court of Appeals—Yes.

12. Basic fact: Should the tanker have realized she was in a Naval formation after passing the screen vessels?

Holding: District Court—No.
Court of Appeals—Yes.

(d) Conclusions or inferences which were reversed.

1. Question: Was the collision governed by the starboard hand rule or the rule of special circumstances?

Conclusion: District Court—Special Circumstances.
Court of Appeals—Starboard Hand Rule.

2. Question: Should the tanker be condemned for not going astern of vessels with which it did not collide?

Conclusion: District Court—No.
Court of Appeals—Yes.*

3. Question: Did the mere presence of lights to starboard, regardless of their change in bearing, require the tanker to give way to them?

Conclusion: District Court—No.
Court of Appeals—Yes.

The Court of Appeals never saw the mate of the tanker, the captain of the *Buchanan*, the Officer in Tactical Command, the Screen Commander, nor any of the other witnesses who testified at the trial. The flag and navigating officers of the four key vessels testified as to the appearance of the lights and as to what could and what could not be seen and determined from lights exhibited by the vessels that night. The trial judge also saw and heard a retired high ranking naval officer testify without contradiction about the appearance of formations at sea at night and the responsibility of commands in the Navy. The conclusions of the District Judge were bottomed on his impression of these men as well as on what they said. There was a very substantial evidentiary basis for the opinion and conclusion of the District Court. The Court of Appeals should not have reversed simply because its members might have decided the case differently. As was said in *Lavender v. Kurn*, 327 U.S. 645:

> "... And the appellate court's function is exhausted when that evidentiary basis becomes apparent, it being immaterial that the court might

* This conclusion is in conflict with the opinion of the Second Circuit in *The Steel Inventor*, 43 F. 2d 958.

draw a contrary inference or feel that another conclusion is more reasonable." (p. 653)

(e) The Court of Appeals did not apply the proper standards to its review.

Nowhere in its opinion does the Court of Appeals refer directly or indirectly to the *McAllister* case or to the rule enunciated therein. In only one minor instance did the Court state that a finding of fact was not supported, yet it reversed many findings of the District Court even though it was not and could not be said that those findings were clearly erroneous. It is submitted that the findings made by the District Court were in fact not "clearly erroneous". Certainly no demonstration of such error of the District Judge was ever made. The opinion and decision of the Court of Appeals is, therefore, in conflict with the rule of this Court set forth in *McAllister* v. *U. S.*; *U. S.* v. *U. S. Gypsum Co.* and *U. S.* v. *Oregon State Medical Society*, *supra*. It should be reversed and the opinion and decision of the District Court should be reinstated.

Conclusion.

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Joseph M. Bassett,
Francis N. Greenshaw,
Counsel for Petitioner.

APPENDIX.

Opinion of District Court.

IN THE

UNITED STATES DISTRICT COURT,

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION.

THE TEXAS COMPANY, owner of the Tanker *Washington*,

Libelant,

v.

THE UNITED STATES OF AMERICA, owner of the USS *Rochambeau*,

Respondent.

UNITED STATES OF AMERICA, owner of the the USS *Rochambeau*,

Libelant,

v.

SS *Washington*, her engines, etc.,
THE TEXAS COMPANY, etc.,

Respondent.

IN THE MATTER

of the

Petition of THE TEXAS COMPANY, as owner of the Tanker *Washington* for exoneration from or limitation of liability.

EVELYN EGBERT, as Administratrix of the Estate of Edward James Egbert, Jr., Deceased; PARLEY BRIGHT, as Administrator of the Estate of Morton Bright, Deceased; CATHERINE BOOTH, as Administratrix of the Estate of Ralph J. Bade, Deceased; BARBARA ALLEN, as Administratrix of the Estate of Kenneth V. Allen, Deceased; MARGARET EDWARDS, as Administratrix of the Estate of John T. Edwards, Deceased; JOSEPH KENNEY, as Administrator of the Estate of Raymond Kenney, Deceased; ROMOLO POMA, as Administrator of the Estate of Pasquale Poma, Deceased,

Libelants,

v.

THE TEXAS COMPANY,

Respondent.

JOSEPH M. BRUSH, Esq., FRANCIS N. CRENSHAW, Esq., Of Counsel for The Texas Company.

THOMAS F. MCGOVERN, Esq., EDWARD B. HAYES, Esq., CHARLES A. BLOCHER, Esq., CHARLES S. HAIGHT, JR., Esq., for the United States of America.

SIMONE N. GAZÁN, Esq., for Claimant Kenney.

JAMES F. O'CONNELL, Esq., WILLIAM P. WOOLLS, JR., Esq., JACK E. GREER, Esq., for Certain Death Cases.

JOHN P. STRAUSS, Esq., for Claimant Pompa.

OPINION OF ALBERT V. BRYAN, U. S. DISTRICT JUDGE:

The U. S. S. *Buchanan* and the tanker *Washington*, of The Texas Oil Company, collided in the Atlantic about fifty miles off the coast of Virginia, just below Cape Henry, soon after two o'clock on the morning of November 14, 1952, with resulting loss of life and personal injuries as well as damage to both ships. Throughout the night the weather was fair, the sky clear, and the wind light, with a smooth sea. A fast destroyer escort, the Navy ship was joining from the rear a formation of ten other naval vessels moving westwardly in an amphibious operation aimed at the Virginia shore. The *Washington*, out of a Gulf port and bound for Philadelphia, was on a northerly heading and had passed through the screen of the formation as it slowed to let her through. Previously hidden from each other by an intervening heavy vessel of the main body, the *Buchanan* and the tanker met as the tanker crossed ahead of, and as the *Buchanan* on the off side and at top speed was overtaking, the intervening ship. The present litigation consists of reciprocal libels between the United States and The Texas Company for the ship injuries, libels against the Company on the death claims, and the petition of the Texas for exoneration or limitation of liability.

On the preceding evening the flotilla had left Norfolk on a mock amphibious attack Operation Seascape upon

Camp Pendleton, located immediately south of Virginia Beach. The task force consisted of a screen of four vessels in a "bent line" or arc protecting a main body of five heavy ships formed in a circle with a radius of 1000 yards and the flagship in the center. The chord of the screen was a stretch of five or six miles. On this night only four ships were in the screen because the *Ruchamkin*, though a screen vessel, was away on a sortie to retrieve a shore detachment and to return with them to the formation at midnight.

U. S. S. *Fremont* was the flagship and guide. In addition to her captain, she carried the Officer in Tactical Command (OTC), in charge of the entire formation. On the extreme left of the screen was the U.S.S. *Corry*, the *Lloyd* next, then the *Hollis* carrying the screen commander as well as her own master, and the *O'Hare* farthest to the right, all destroyer-type craft. The wing tip ships—the *Corry* and *O'Hare*—were stationed 5000 yards from the guide and 75° to each side of her base course line; while the two inner screen vessels were distant 3700 yards from the guide and, respectively, 33° to the right and left of the base course. Around the flagship were the *Glynn*, directly forward; the *Capricornus*, nearly abeam to starboard; (the *Cotter Hall* was to have been on the *Fremont's* starboard quarter, but was detained for repairs and never participated in the maneuvers); the *San Marcos* astern of the flagship; the *New Kent* on the port quarter; and the *Newport News* broad on the *Fremont's* port bow.

The formation steamed almost due east from the Virginia capes. Outbound the *Newport News* on radar picked up the *Washington* to the south, on a northerly course, inshore of the flotilla, and the *Newport News* almost constantly thereafter maintained a track on her. Originally the Navy unit planned to turn south when about sixty miles at sea, and when opposite "Point Yoke"—Camp Pendleton—to head west for the assault. Before reaching the end of the first leg, however, the OTC discovered that an aircraft carrier group was maneuvering south of him and he, therefore, abandoned his intended course change in that direction; instead, the flotilla switched to due north at 0055. About

0115, the flotilla swung from north to west, 270° T. At 0150 again the course was changed, this time to 257° T. The last alteration was necessary to bring the group into Camp Pendleton—to compensate for the abandoned southward movement. Their speed was 14 knots.

In the meanwhile the *Washington*, with all regulation lights burning, was on a course of 71½° T. (9° gyro) and a speed of 14½ knots, her presence well known to the flotilla. She had passed the aircraft carriers and now saw more white lights to starboard, both forward and abeam, and some on her port bow. None seemed nearer than five miles. Save for a temporary deviation to port to give ample way to an unidentified southbound ship, she steadily maintained her course and speed.

The combat intelligence center (CIC) of the *Fremont* had the *Washington* on her radarscope at a range of thirteen miles just before the flotilla changed from its 270° T. course at 0115. Other ships of the group also held the *Washington*. The flag did not consider her to be a threat to his formation, for he reckoned that the *Washington* would pass astern of the group. But when the formation changed to 257° T. at 0150, twenty some minutes before the accident, the *Washington*, then off the *Fremont*'s port bow at a distance of ten miles, was computed to be on a collision course with the *Capricornus*, collision predicted at 0209. This solution was thereafter verified at short intervals, and about three minutes later the *Washington* was bearing 229° T. with a range of 6.7 miles from the *Fremont*, and next at a range of 3.9 miles, bearing 230° T. About 0202 it appeared she would pass through the center of the formation, her closest point of approach being 1700 yards from the *Fremont*. This information was published generally throughout the flotilla at a time when the *Buchanan* was in the area. Because of sea return or other interference, after 0202 the *Washington* was no longer observable on the flagship's radarscope.

At 0205 the formation's speed was reduced from 14 to 8 knots, then to 5 knots at 0207. The *Washington* had not yet passed through the screen. The purpose of the speed

reductions was to let her through. (The clocks of the flotilla were possibly two minutes ahead of the tanker's but the times here are those of the Navy.) On the *Washington*, soon after 0200, the second mate having her con saw two red lights almost dead ahead or fine on the starboard bow, "bright" and "close of me and going across my bow." Immediately he ordered the tanker to 23° gyro (21½° T.) from her base course of 9° gyro (7½° T.). The two red lights were undoubtedly the port side lights of the *Hollis* and the *O'Hare* (the vessels of the right wing of the screen). When these two red lights were well on the tanker's port bow, she went back to 9° gyro or 7½° T. She had passed between the *Hollis* and the *Lloyd*, about a half-mile from the latter, more than a mile from the *Hollis*, and 1200-1500 yards ahead of the *Gilpin*, the lead-ship of the main body.

Just after he had steadied on 7½° T. and was passing the *Capricornus* (the main body's starboardmost ship) the mate saw another red light "very close to my starboard hand, and coming across from my starboard bow to my port bow at a terrific speed." Immediately he gave the tanker hard left rudder and sounded two blasts on her whistle, followed by several short ones. The red light was the *Rachambin* as she sped across the *Washington's* bow. Within seconds the vessels collided, the *Washington's* stem ramming the *Rachambin* a bit aft of midship. It was 0213 *Washington* time, possibly 0215 *Rachambin's*.

Earlier the *Rachambin* had completed her mission and had tailed the formation while it was still steaming eastwardly. About 0138 she reported to the screen commander by voice radio her readiness to join, and in reply was told to wait. At 0140 she reported her arrival to the guide and received acknowledgment at 0155, but her message did not reach the *Fremont's* bridge until after the collision. She was then on the starboard quarter of the main body, bearing 65° T. from the flagship and 6500 yards distant. She had followed around to the right of the group as it changed courses. No warning of the approach of the *Washington* was ever specially given to the *Rachambin* by the guide or by any other ship in the formation. Her commander testi-

fied that he had not received the reports which the *Fremont* had been releasing concerning the tanker. Moving with the same speed as the main body, while waiting, the *Ruchamkin* was next directed by the screen commander to move to a position from which, when ordered, she could assume her station in the screen—immediately to the north and right of the *Hollis*. The tanker was then preparing to go through the screen—on the other side of the *Hollis*—her course 7½°T.—then 21½°T.—then 7½ T., the *Ruchamkin's* 260°T.

For taking position the command to the *Ruchamkin* was to expedite, *i.e.*, to hurry or move "smartly". With engines rung up to 22 knots, she coursed along the right side of the main body, almost parallel to the formation—a divergence of only 3°—and 1000 to 1500 yards from the nearest ship. In effect told to disregard the speed reductions, the *Ruchamkin* was ordered by the screen to "continue to expedite". She obeyed. Still no special warning was given her of the *Washington's* presence inside the screen, though she was in plain view of every vessel of the whole flotilla save the *Ruchamkin*. Indeed, before the *Ruchamkin* encountered the *Washington* the formation had been ordered to resume 14 knots, another assurance to the *Ruchamkin* that all was clear.

The intervening main body—"cargo lights, porthole lights and mast lights; or what you have from this formation"—obscured the *Washington* and the *Ruchamkin* from each other. Then on a 260° or 265° T. course and overtaking what she thought was the *Carter Hall* (not being advised of the latter's absence), but which in fact was the *Capricornus*, the *Ruchamkin* noticed that the next vessel, believed to be the *Glynn*, apparently was closing her. In truth it was the tanker, at a range of not more than 1000 yards. At once the Navy ship went to 270° T., then to 275° T., and then to full right rudder. Only a directional change of 28° was accomplished. She shot across the tanker's bow. Collision followed, within a minute or two from the moment the one observed the other.

Stressing that radar perception does not relax the rigor of the International Rules and insisting that the *Washington* was throughout the burdened vessel in a crossing situation, the United States lays blame to the tanker, in that, she did not give way to the flotilla as a unit or as separate ships. 33 USCA 104. Conceding the premises the tanker contends, however, and the court agrees, that neither before nor after the tanker entered the screen—the two pivotal stages of the case—did the *Washington* breach the right hand rule. Indeed, no transgression of any sort was committed by any vessel before the tanker passed through the screen. The cause of the collision was the Navy's breach of the special circumstances mandates of the Rules while the *Washington* was in the midst of the flotilla. 33 USCA 112,121.

I. Assuming, as the Government asserts, that the tanker had been apprised by public notices of the Navy's plans for Seascape, she was not thereby burdened more heavily than to anticipate the appearance of the Navy ships and to avoid unnecessary interference with them. But even if it was the *Washington's* duty to give way to the formation—if the starboard hand rule accorded precedence to the flotilla as a whole—she had no opportunity to defer. As she stood up the coast, the *Washington* had passed one naval group, and if she was to expect another, nothing in the later lights revealed the arrival of a second formation. Moreover, initially the flotilla planned to move south on its first turning, and thus the tanker might reasonably have believed she would escape the formation entirely.

The merchantman had before him only a maze of white lights. Well could they have marked a fishing fleet or a number of unassociated freighters. All hands agree that traffic was very thick that night. The lights were all within the customary lanes of coastwise shipping and in the routes of vessels bound for and out of the Chesapeake Bay ports. For the last hour the ships of the screen had been repeatedly altering position, as they oriented and reoriented; the main body also, though less radically. These movements

aggravated the confusion of the lights. Blinker as well as light signals from the naval vessels were not intelligible to the stranger and she is not blameworthy for having gleaned nothing from them. Consequently, even if it had been the duty of the tanker to go astern of a naval formation, she had no warning she had met one.

Besides, until 0150, only slightly more than twenty minutes before the collision, the *Washington* was not a threat to the flotilla; as tracked she would pass astern of the group. At that late hour the guide established a collision course with the tanker by turning the flotilla to 257° T. from 270° T. To be sure, the flotilla was entitled to change course, but this alteration was just another factor rendering avoidance of the flotilla more difficult.

In this connection it must be remembered, too, that the tanker and the flotilla were meeting at less than a right angle. Also, because of the eastwardly receding curve of the southerly end of the screen arc, the tanker was not in a situation involving risk of collision with the flotilla until she was beyond the path of the southernmost ship of the screen, the *Corry*. Hence the tanker did not have the choice of skirting the flotilla. At all events, neither of the two left wing or southern vessels of the screen (the *Corry* and the *Lloyd*) ever tendered collision. When the tanker neared, but before she pierced the screen, both the *Corry* and the *Lloyd*, as we have seen, diminished their speed markedly. Their bearing thus did "appreciably change" and risk of collision disappeared. As the *Washington*'s mate said, these ships slid down his starboard hand and dropped astern of him.

Therefore, the tanker, in not at once yielding to the flotilla—in not going astern of the *Corry* or the *Lloyd*—did not violate the right hand rule. While the OTC's decreases of speed were purposed, commendably enough, to minimize the dangers incident to the meeting, those dangers sprang principally from the Navy's desire to maintain a unified formation, a unity which demanded exclusive occupancy of almost twelve square miles of the sea at all times and which had embarrassed the *Washington a limine*. But

having slowed his ships, the OTC intended for the tanker to continue as she did. On glimpsing the red side light of the *Hollis* to starboard, however, the *Washington* immediately righted her wheel—going from 7½°T. to 21½°T.—but returned to her original course as soon as the *Hollis* was away. The tanker did not attempt to pass eastwardly through the formation; the screen commander admitted that he was mistaken in so announcing to the flotilla.

Just as the tanker's behavior before she penetrated the screen was blameless, so for entering it she is not censurable. There was no other way for her. Had she stopped or slowed she would have been enveloped by the flotilla; had she gone astern of the *Lloyd*, she would have engaged the main body of the formation.

II. Furthermore, the *Washington* committed no fault of navigation after she moved into the field of the flotilla. When she resumed 7½°T. she was departing the formation, crossing the bow of the outermost heavy ship, the *Capricornus*, at a range estimated by the OTC as from 500-800 yards and by the watch of the *Capricornus* at 2000-2500 yards. Already she had cleared the *Glaux*, the van of the main body, by 1200-1500 yards. At this time the *Capricornus* was at five knots. (In an answer to interrogatories the Government stated that the *Capricornus* was a darkened ship from midnight until 0200; but the Government asserts this was an error, and the court so finds.) Obviously the flag considered the *Washington* safely away as she passed the *Capricornus*, for he thereupon ordered the whole flotilla to resume its regular 14-knot speed.

The meeting of the *Ruchamkin* and the *Washington* was not controlled by the starboard hand rule, for neither vessel could see the other. *Lind* v. *United States*, 2 Cir. 1946, 156 F. 2d 231, 233. There is no acceptable proof that the tanker could visually have espied the *Ruchamkin*, or the *Ruchamkin* the tanker, before the other emerged from the obstruction of the *Capricornus*. Wholly incredible is the testimony of the tanker's lookout that he discerned the lights of the *Ruchamkin* before and just after 0200, reporting them to

the bridge each time, and could recognize them as the ship with which the tanker collided. The Court cannot find, as does the Government, any corroboration of the lookout in the testimony of the tanker's wheelsman. There is virtual unanimity among all the watch officers that so numerous were the lights that no particular ship was distinguishable. Even the screen commander lost sight of the *Washington* as her lights merged with the main body's. Nor were they separable on the radarscope. With so many pips on the radarscope, the picture was like "a cluster of grapes" and individual identification almost impossible.

As the *Ruchamkin* was not in sight, the *Washington* was not required by Article 28, 33 USCA 113, to give *Ruchamkin* a whistle signal of the tanker's return to 7½ T. A blast then might incidentally have been helpful or it might have been confusing, but as it was not owed the *Ruchamkin*, its omission was not fault.

Governing here are the special circumstances rules, Articles 27 and 29, 33 USCA 112, 121. Both vessels exerted themselves to the utmost to avoid collision after their presence was mutually disclosed. From that moment no negligence can be laid to either. Although "right hard rudder" by the *Ruchamkin* might have saved her, it is doubtful; her master was acting *in extremis* and he must not be judged too nicely. But earlier neglect of the Navy directly and proximately accounts for the collision.

No explanation is offered why the *Ruchamkin* did not receive and regard the advice repeatedly given the flotilla both by the OTC and by the screen commander of the tanker's progress; no reason is given why the *Ruchamkin* was not alert to the danger she might well anticipate from the stranger. In these respects she was negligent. Again, with the tanker proceeding between the *Lloyd* and the *Hollis* and the formation slowing to let her through, the screen commander nevertheless called the *Ruchamkin* to speed across the bows of the *Washington*, at the same time misjudging the course of the merchantman. For allowing the *Ruchamkin* to follow an order so plainly perilous, the OTC, too, was negligent. Though the expediting order

established an obvious risk of collision, no effort was made to caution the tanker against the imminent danger. Utterly ineffectual as a signal were the flashing lights sent her from the *Fremont*. Delayed until the tanker was passing the *Capricornus* and designed only to reprimand the *Washington* for traversing the area, they were focused not from a nearby ship but from the flagship, a vessel encircled by other ships. Light signals that night had not been effective between the members of the naval group themselves—not even the screen commander could be raised by the *Ruchamkin* by lights.

If a private vessel, the *Ruchamkin* because of her negligence would be liable *in rem*, and her owner would be liable *in personam*, for the damage to the tanker. Hence here the United States must answer on both principles. Public Vessels Act, 46 USCA 781. *Ruchamkin* is also liable under the *in rem* principle, and the Government *in personam*, for the negligence of the commodore and the screen commander. This liability is not fixed by virtue of a military chain of command; it is predicated upon what these officers did or left undone while present and in authority. Moreover, by reason of their authority to direct her moves, they were constructively aboard the *Ruchamkin*. As we later point out specifically, the *Fremont* and the *Hollis* are also liable under the *in rem* principle, and the United States *in personam*, for the negligence of the tactical officers respectively aboard them. No other ship in the flotilla is found guilty of tortious conduct.

The court has decided the issue of the *in rem* liability of the *Fremont* and *Hollis* because the Government requested a finding on this head. Each of these two vessels had her own master and the United States urges with much force and logic that, as the mistakes of the tactical officers occurred in their actions as commodore and screen commander, and not in the navigation of the ships they were aboard, these vessels are not chargeable with such negligence. Strong precedent is cited to this point. *Publicover* v. *Alcoa S.S. Co.*, 2 Cir. 1948, 168 F. 2d 672, 678; the *Glaucus* and *City of Florence*, 1948, Law Reports (Eng.) Probate

Division 95; *The Sobieski*, 1949, Law Reports (Eng.) Probate Division, C. A. 313. But in all of these cases the commodore's vessel was owned by another than the employer of that officer. Moreover, in each instance he was aboard or acting in that capacity without the invitation or desire of the owner.

On the other hand, instantly the tactical officer was on board at the direction of the owner; the vessel was furnished him by the owner for his tactical duties. There is nothing inequitable in holding the owner, and the ship it provided for him, responsible for the tactical officer's conduct. In *United States* v. *The Australia Star*, 2 Cir. 1949, 172 F. 2d 472, 476, the Government's escort ship was held liable for failing to give both her escortee and a stranger-vessel warning of the approach of each other. True, there the escort's master and the escort officer were the same person; but, surely, the division of these responsibilities between two officers, instead of vesting them in one, does not destroy the principle. We find no repudiation of *The Australia Star* evinced in *United States* v. *The Adriatico*, 2 Cir. 1951, 190 F. 2d 884.

Again, the argument of the Government would vitiate the intent of the Public Vessels Act. Its intendment is to render the United States suable and answerable for a want of care on the part of its authorized personnel in their acts upon its public vessels. *Canadian Aviator, Ltd.* v. *U. S.*, 1945, 324 U. S. 215, 224. In the present instance the commodore and the screen commander were certainly lawfully aboard and did, or failed to do, that which was within their authority. In these circumstances the Act considers their conduct to be their ships'. Indeed, they each had the power to control the movements of the very ships that carried them. Under the Public Vessels Act the liability of the United States is traced through the ship, and if the tactical officer's negligence is not to be ascribed to the ship, then any liability of the United States for the negligence of such officers, no matter how grave,

Finally, proctors for the Government complain of the court's refusal to direct production before trial by The Texas Company of the statements of four members of the *Washington*'s crew, "especially when the Government's Board of Inquiry testimony had been required to be turned over to The Texas Company" and because this was a "ruling for attorney privilege and against naval privilege". They request the court "for the benefit of the record" to "note the Government's contention." It is so noted, but it is fundamentally in error. Only because the statements were the personal work product of counsel was pretrial access to this memoranda not allowed; at the trial the Government was unrestricted in its cross examination of these witnesses; and not the slightest prejudice to the United States was suggested at the hearing. But as to the Government's production before trial, the fact is that nothing was "required" of it. The Court ordered discovery in precisely the terms the Government itself had offered disclosure; no more was ordered than was tendered. Further, its proctors repeatedly disclaimed any privilege—specifically, on June 2, 1954, and again on September 13, 1955.

Adopting this memorandum as its findings of fact and conclusions of law, the court will on presentation enter a decree in each of the death suits and in the limitation proceeding exonerating the *Washington* and The Texas Company, and will pass a decree in The Texas Company libels fixing liability upon the United States in accordance with the views herein expressed.

(Signed) Allen E. Beaty
United States District Judge

April 17th, 1956.

Opinion of U. S. Court of Appeals, Fourth Circuit.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 7284.

UNITED STATES OF AMERICA, owner of the USS. *Rachamkin*,
Appellant,

versus

SS. *Washington*, her engines, etc., THE TEXAS COMPANY, etc.,
Appellee.

No. 7285.

UNITED STATES OF AMERICA, owner of the USS. *Rachamkin*,
Appellant,

versus

THE TEXAS COMPANY, owner of the tanker *Washington*,
Appellee.

No. 7286.

EVELYN EGGLESTON, Administratrix of the Estate of Edward James Eggleston, Jr., Deceased, *et al.*,
Appellants,

versus

THE TEXAS COMPANY,
Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT ALEXANDRIA.

(Argued November 16, 1956. Decided January 25, 1957.)

Before PARKER, Chief Judge, SOPER, Circuit Judge, and R. DORSEY WATKINS, District Judge.

Marvin Schwartz (William P. Wools, Jr., Betty H. Olchin, and James P. O'Connell on brief) for Appellants in No. 7286; Thomas F. McGovern, Attorney, Department of Justice (L. S. Parsons, Jr., United States Attorney, Leavenworth Colby, Edward B. Hayes, and Charles S. Haight, Jr., Attorneys, Department of Justice, on brief), for Appellant in Nos. 7284 and 7285, and Francis N. Crenshaw (Baird, White & Lanning, and Joseph M. Brush on brief), for Appellee.

PARKER, Chief Judge.

These are appeals in admiralty cases growing out of the collision between the tanker *Washington* of the Texas Company and the destroyer *Richard Ing*, a vessel of the United States Navy, which occurred in the early morning of November 14, 1952, about 5 miles off the Virginia capes. Libels *in rem* and *in personam* were filed by the owners of both vessels against each other, and suits seeking damages on account of wrongful death were filed against the Texas Company in behalf of the personal representatives of soldiers aboard the *Richard Ing* who were killed by the collision. All of these cases were heard together and decrees were entered exonerating the *Washington* of fault, finding negligence in the operation of the *Richard Ing* and entering an interlocutory decree for the damages against the United States and in favor of the Texas Company. The libels filed on account of wrongful death were dismissed. See the *Richard Ing*, D. C., 141 F. Supp. 97. The United States and the death claimants have appealed. They do not contest the finding of fault on the part of the *Richard Ing* nor the finding of *in personam* liability on the part of the United

States for negligence in her navigation; but they contend that the *Washington* should also be held in fault in the collision. We think that this contention must be sustained.

As pointed out in the opinion below, the *Buchanan* was one of a number of naval vessels engaged in an operation off the Virginia capes. At the time of the collision, they were proceeding to a prearranged destination off Virginia Beach near Camp Pendleton and were on a course of 257 degrees. The *Fremont* was the guide ship of the flotilla and around her were grouped five other heavy ships in a circle with a radius of 1,000 yards. Ahead of this formation was a screen of four destroyers, the *Corry*, the *Lloyd*, the *Hollis* and the *O'Hare*. The *Buchanan* had been on a mission to pick up some soldiers and was returning to take her place in the screen of destroyers when the collision occurred.

The *Washington* was proceeding on a course of 74½ degrees. Although she had seen to starboard the lights of the naval flotilla which was on a course of 257 degrees, she entered the screen of destroyers passing between the *Lloyd* and the *Hollis* and avoiding collision only because the ships of the flotilla, other than the *Buchanan*, had been slowed down from 14 to 8 and then to 5 knots per hour. The *Buchanan* was not ordered to slow down and was not told of the presence of the *Washington* within the screen but was ordered to "expedite" to her place in the formation and was proceeding at a speed of 22 knots per hour to her place in the screen on a course 1200 to 1500 yards north of and practically parallel with (265 degrees), the course of the [illegible] the [illegible], the *Gwin* [illegible]. We think, as did the judge below, that it was negligence on the part of those in charge of the naval operation not to advise the *Buchanan* of the presence of the *Washington* within the screen and to instruct the *Buchanan* forward at such a high rate of speed, in view of the dangerous situation existing; but we think that the *Washington* was at fault in failing to observe the starboard [illegible] rule both before entering the screen and after it was entered, and was in fault, also, in failing to keep a proper lookout and in failing to take

proper precautions to avoid the collision, when by the exercise of proper care it might have been avoided.

We are not impressed by the contention that those on the *Washington* did not know that they were approaching a naval formation at a time when they might have passed around it and avoided all danger. The lights of the flotilla were seen to starboard and were recognized by two men on lookout as naval vessels. Their number and their signalling to each other with blinker lights should have put the *Washington* on notice, apart from the fact that the Navy had published notice of the operation in such way that it is hardly reasonable to suppose that ships of the Texas Company were not advised of it.* The explanation that those on the *Washington* thought the flotilla to be a fleet of fishing vessels is not borne out by the evidence which shows that they were not displaying the sort of lights that fishing vessels would display. Very illuminating, in this connection, is the fact that on the morning after the collision, the captain, who had been asleep at the time of the collision, gave a statement to the press that the cause of the collision was that the flotilla was navigating without lights. When asked about this at the Coast Guard investigation of the collision, he said, "But had they been using any lights, we would have seen them; they wouldn't have gone [close] as that quickly without any [warning to us]." The evidence shows that all of the ships were fully lighted, that the night was clear and that there was nothing to prevent the lights being seen.

If it be assumed that those on the *Washington* did not recognize the naval flotilla for what it was and that the vessel was without fault in entering the section, she would, nevertheless, not be absolved from the duty of observing the starboard hand rule with respect to the vessels that she met. In *The Oregon*, 158 U. S. 186, 15 L. Ed. 932, we held that the rule was applicable to the case of a merchant vessel crossing the course of vessels in a naval formation, even

* [illegible] Navy's Notice to Mariners covering the proposed operations had been published by the Coast Guard on November 10 to the Texas Company in New York and the copies to the Texas

though the latter had been "blacked out" until shortly before the collision. If that rule had been properly observed by the *Washington*, it seems clear the collision here would have been avoided, notwithstanding the negligence in the navigation of the *Ruchamkin*. "The International Rules for Navigation at Sea" as they were at that time, are as follows:

Article 19, 33 USCA sec. 104. "When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other."

Article 21, 33 USCA sec. 106. "Where, by any of these rules, one of two vessels is to keep out of the way the other shall keep her course and speed.

"Note.—When, in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision."

Article 22, 33 USCA sec. 107. "Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other."

Article 23, 33 USCA sec. 108. "Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse."

Article 27, 33 USCA sec. 112. "In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger."

Article 29, 33 USCA sec. 121. "Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any pre-

caution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

Notwithstanding that the second mate in charge of navigating the *Washington* knew that there were a number of vessels to his starboard, whose lights he could see, and that it was his duty to keep out of the way of any such vessels as might attempt to cross his course, we think it clear from the evidence that he made no proper effort to discharge his duty in this respect. The *Washington* was equipped with radar and he admits that he did not look at it after 2 A. M., which was fifteen minutes prior to the collision. The radar of the *Fremont* showed the *Washington* to be on a collision course with the *Capricornus* of the flotilla and collision was avoided only by the slowing down of the flotilla. If proper attention had been paid to the radar on the *Washington*, the danger of collision, not only with the *Capricornus* but also with the *Rockland*, should have been seen. Furthermore, the second mate was keeping no adequate lookout. If a proper look out had been kept, he should at least have seen the approaching lights of the *Lloyd*, the *Newport News*, the *Algol* and the *Capricornus*, and yet he passed these vessels without observing them, although so near to them that collision with the *Capricornus* was averted only by the slowing of the flotilla.

If a proper lookout had been maintained, there is no reason why the approaching lights of the *Rockland* should not have been observed well in advance of the collision. After the *Washington* had crossed the course of the *Algol*, there is no reason why she should not have seen the approaching lights of the *Rockland*, which was steering at 22 knots per hour as compared with the speed of 7 or 8 knots of the other vessels of the flotilla. This speed should in itself have attracted attention, and at this time the *Washington* had reached a position where the lights of the other vessels would not be confusing, as there were no other vessels of the flotilla in the direction of the *Rockland* except the *Capricornus*.

It is argued that the *Capricornus* shut off the view of the *Ruchamkin* from the *Washington;* but the evidence does not justify our accepting this as a fact. The *Ruchamkin* was on a course 1200 to 1500 yards beyond that of the *Capricornus.* She was traveling 22 knots as compared with 5 or 8 of the *Capricornus* and 14 of the *Washington.* The *Capricornus* was only 459 feet in length with a 63 foot beam; and she could have been for only a very brief space of time in the direct line of vision between the *Washington* and the *Ruchamkin,* and even for this brief period there is no reason why the white mast and range lights should not have been seen and noticed, especially as they were moving at such an unusual speed. The lookout on the *Washington,* one Upton, testified at the Coast Guard hearing that he did indeed notice them ten minutes before the collision and twice reported them to the bridge by ringing a bell. This testimony is corroborated by the helmsman, who testifies that he heard the bell; and we see no reason why it should not be accepted, as it is entirely reasonable and was given shortly after the collision at the Coast Guard hearing. The mate testifies that he paid no attention to the bell signals from the lookout because he was in position to see and judge of the lights better than the lookout. Whether the testimony of Upton is accepted or not, we think it clear that if a proper lookout had been maintained by the mate, the *Ruchamkin* would have been discovered in ample time to have avoided the collision. "The ship will be held in fault if the lookout fails to see or hear what, if he had given heed, he should have seen or heard." Robinson on Admiralty p. 814. *The New York,* 175 U. S. 187, 204. *The Colorado,* 91 U. S. 692, 699. As said in the case last cited:

> "Lookouts are valueless unless they are properly stationed, and vigilantly employed in the performance of their duty; and if they are not, and in consequence of their neglect the approaching vessel is not seen in season to prevent a collision, the fault is properly chargeable to the vessel, and will render her liable, unless the other vessel was guilty of [illegible]

Even if the *Rachamkin* had not been discovered until the course of the *Capricornus* had been crossed, there is no reason why the collision might not have been avoided in the exercise of reasonable care on the part of the *Washington*. Several minutes elapsed between that time and the time necessary to cover the twelve or fifteen hundred yards of distance before the course of the *Rachamkin* could be reached; and, in this time, the engines could have been reversed, an alarm sounded on the whistle and the course of the vessel changed so as to avoid collision. If nothing had been done but reverse the engines, the collision would have been avoided, as the *Rachamkin* nearly cleared the *Washington* as it was, being struck well abaft her beam. A slight slowing up of the *Washington*, with a delay of only a few seconds in reaching the crossing course, would have enabled the *Rachamkin* to have crossed in safety. The evidence is that those on the *Rachamkin* allowed some time to elapse without doing anything after the *Washington* was seen by them. Their excuse for this delay was that they thought that the *Washington* was one of the ships of the flotilla. The *Washington* should have seen the *Rachamkin* as soon as the *Rachamkin* saw her, and she could not have been misled as to the danger. Certainly, when she crossed the course of the *Capricornus*, she should have realized the danger presented by the oncoming *Rachamkin* and should have taken instant steps to keep out of her way. This she did not do, manifestly because a proper lookout was not being kept, as the mate testifies that the crash came within thirty seconds of his sighting the *Rachamkin*. The whistle was not blown until the vessels were in collision. Such negligence cannot be excused as error in extremis. As said in *Cuba Distilling Co. v. Great Lakes*, 2 Cir., 143 F. 2d 409, and quoted by us in *The Oregon*, *supra*: "* * * men, charged with responsibilities of command, must not be wholly incapacitated for sound judgment when suddenly thrust into peril. Part of their equipment for their duties is some ability to think, be the situation ever so sudden and so grave."

Other negligence in the operation of the *Washington* was failure to sound her whistle when changing course. When passing between the *Lloyd* and the *Hollis*, she changed her course 14 degrees to starboard and, after she had passed between these vessels, went back on the original course without sounding her whistle as required by the rules at the time of either change. By that time, at least, the *Washington* should have realized that she was within the screen of the naval formation and should have followed the rules strictly, not only for the sake of the vessel which she was seeking to avoid, but also for the sake of advising the other vessels of the flotilla of what she was doing. If, however, regard be had only to the *Rochambin*, a proper lookout would have advised the *Washington*, as we have seen, that she was on crossing courses with that vessel and that the warning signal should be given for her benefit.

Since both the *Rochambin* and the *Washington* were at fault, the damages resulting from the collision should be divided equally between them so that one-half shall be borne by the Texas Company and one-half by the United States, and this applies to the *in personam* as well as to the *in rem* liability. The Texas Company argues that there is *in rem* liability on the part of the *Fremont* and the *Hollis*, as the Task Commander directing the entire flotilla was aboard the *Fremont* and the Screen Commander directing the destroyers was aboard the *Hollis*. The argument is that negligence in ordering the *Rochambin* to expedite to her position in the screen and in not warning her of the presence of the *Washington* was a contributing cause of the collision, and that the vessels carrying the Task Commander and the Screen Commander are liable *in rem* for their negligence in this regard. The judge below expressed an opinion to this effect although the question was not reached in the decision which he rendered. If this position can be sustained, it will result that although the *Washington* was the burdened vessel and was at least as much if not more to blame for the collision than the *Rochambin*, the United States will have to bear three-fourths of the damage resulting from the collision and the Texas Company only

one-fourth merely because the fleet officers were located on vessels other than the *Rachamkin*. We do not think that the position can be sustained or that any such result is required. The *Rachamkin* was not operating under the direction of any other vessel or the officers of any other vessel. She sustained the same relationship to the Task Commander as did other vessels of the flotilla and the same relationship to the Screen Commander as did the other destroyers in the screen. Other vessels of the flotilla were no more liable for her fault caused by negligence in the directions of these officers than if the officers had been issuing the orders from land or from an aeroplane.

It is well settled, of course, that where vessels operating together are at fault in a collision, each is responsible *in rem* for its proportionate part of the damage even though they belong to the same owner. *The Eugene F. Moran*, 212 U. S. 466. It is equally well settled, however, that notwithstanding common ownership, *in rem* liability exists only with respect to a vessel which is at fault in the collision. *Liverpool, Brazil & River Plate Steam Nav. Co. v. Brooklyn Eastern District Term.* 251 U. S. 48; *Sacramento Nav. Co. v. Salz* 273 U. S. 326, 332. If a vessel in collision is in control of another vessel or its commanding officer, the latter is held to *in rem* liability, if in fault, on the ground that it controlled the ship in collision. This is the basis of liability in the *United States v. Luckenbach Steamship Co.*, 2 Cir., 172 F. 2d 472; relied on by the Texas Company, where a convoy was subject to the orders of an escort vessel. It is the basis of liability, also, in the case of the *Canadian Aviator v. United States*, 324 U. S. 215, where the injured vessel was under the direct control of the vessel held liable, which was guiding the injured vessel through dangerous waters. Here the *Rachamkin* was not subject to the control of either the *Fremont* or the *Hollis*, or the officers of those vessels, but of the Task Commander and the Screen Commander who had taken stations on them, but for whose orders those vessels were no more responsible than if the officers had been stationed on other vessels or, as has been said, than if the officers had been issuing the orders from land or an aeroplane.

Very much in point is the case of *Publicover* v. *Alcoa SS Company*, 2 Cir., 168 F. 2d 672, 675, 678. In that case there was a collision between a schooner and a steamship, the *Alcoa Pilot*, which was one of a convoy of vessels. The commodore of the convoy was master of another vessel, the *Cyrus Field*. It was attempted to hold the *Cyrus Field* to liability for alleged failure of the commodore to do his duty in his capacity as commodore. In holding the *Cyrus Field* not liable, the court, speaking through Judge Learned Hand, said:

> "Finally, even though we were to press the liability of the '*Cyrus Field*' as a factitious jural person, she was not at fault; she did not contribute to the collision. The hypothesis is that it was the failure of the commodore to take charge of the '*Alcoa Pilot's*' navigation which was the fault."

See also *The Glaucus* and *City of Florence* 1948 Law Reports (Eng.) Probate Division 95; *The Sobieski* 1949 Law Reports (Eng.) Probate Division C. A. 313.

One other point raised by the appeal may be dismissed with brief mention. The government complains that it was an abuse of discretion on the part of the trial judge not to require counsel for the Texas Company to produce statements of witnesses taken by counsel when the production, with certain security precautions, of evidence taken at the Naval Court of Inquiry was ordered in accordance with the practice approved by this court in *The Oregon*, 4 Cir., 175 F. 2d 632. This was a matter resting very largely in the discretion of the trial judge, who had to decide to what extent the statements made to counsel were privileged. We cannot see that the discretion was abused or that the case of the government was in any way prejudiced, as counsel for the government were given full opportunity to examine and cross examine the witnesses whose statements they requested.

For the reasons stated, the decrees appealed from will be reversed in so far as they absolve the *Washington* and

the Texas Company from liability, but affirmed in so far as they establish liability on the part of the United States for the fault of the *Ruchamkin;* and the cases will be remanded to the court below for further proceedings not inconsistent herewith.

Affirmed in Part,
Reversed in Part, and
Remanded with Directions.

SOPER, Circuit Judge (dissenting in part).

In my view the flagships as well as the *Ruchamkin* should be held liable for the collision. They furnished the necessary stations for the Task and Screen Commanders who controlled the whole operation, they supplied the means and the men by whom the movements of the *Ruchamkin* were directed and hence were participants in the accident. See *United States* v. *Australia Star*, 2 Cir., 172 F. 2d 472; *Canadian Aviator* v. *United States*, 324 U. S. 215; *Publicover* v. *Alcoa*, 2 Cir., 168 F. 2d 672, 678. On this point I am in accord with the conclusions of Judge Bryan as set out in his opinion in the District Court.

Public Vessels Act.

(46 U. S. C., §§781, 782)

"§781. Libel in admiralty against or impleader of United States

"A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided*, That the cause of action arose after the 6th day of April, 1920. Mar. 3, 1925, c. 428, §1, 43 Stat. 1112."

"§782. Venue of suit; application of provisions of chapter 20

"Such suit shall be brought in the district court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States, or if such vessel or cargo be outside the territorial waters of the United States, then in the district court of the United States for the district in which the parties so suing, or any of them, reside or have an office for the transaction of business in the United States; or in case none of such parties reside or have an office for the transaction of business in the United States, and such vessel or cargo be outside the territorial waters of the United States, then in any district court of the United States. Such suits shall be subject to and proceed in accordance with the provisions of chapter 20 of this title or any amendment thereof, insofar as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest. Mar. 3, 1925, c. 428, §2, 43 Stat. 1112."

Suits in Admiralty Act.

(46 U. S. C., §§741, 742, 743)

"§741. Exemption of United States vessels and cargoes from arrest or seizure

No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall, in view of the provisions herein made for a libel *in personam*, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided*, That this chapter shall not apply to the Panama Railroad Company. Mar. 9, 1920, c. 95, §1, 41 Stat. 525."

"§742. Libel *in personam*

In cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel *in personam* may be brought against the United States or against any corporation mentioned in section 741 of this title, as the case may be, provided that such vessel is employed as a merchant vessel or is a tugboat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel *in rem* or *in personam* in any district, a cross libel *in*

personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States." Mar. 9, 1920, c. 95, § 2, 41 Stat. 525."

"§ 743. Procedure in cases of libel *in personam*

Such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. A decree against the United States or a corporation mentioned in section 741 of this title may include costs of suit, and when the decree is for a money judgment, interest at the rate of 4 per centum per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. If the libelant so elects in his libel, the suit may proceed in accordance with the principles of libels *in rem* whenever it shall appear that had the vessel or cargo been privately owned and possessed a libel *in rem* might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief *in personam* in the same suit. Neither the United States nor such corporation shall be required to give any bond or admiralty stipulation on any proceeding brought hereunder. Any such bond or stipulation given prior to March 9, 1920, in admiralty causes by the United States or the United States Maritime Commission, shall become void and be surrendered and canceled upon the filing of a suggestion by the Attorney General or other duly authorized law officer that the United States is interested in such cause and assumes liability to satisfy any decree included within said bond or stipulation, and thereafter any such decree shall be paid as provided in section 748 of this title. Mar. 9, 1920, c. 95, § 3, 41 Stat. 526; Ex. Ord. No. 6166, § 12, June 10, 1933; June 20, 1936, c. 858, §§ 203, 204, 904, 49 Stat. 1987, 2046."

Starboard Hand Rule and Related Rules of Navigation.

(33 U. S. C., 101, 104, 106, 107, 108)

"101. Suggestion for ascertainment of risk of collision. Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist. (Aug. 19, 1890, c. 802, sec. 1, 26 Stat. 326.)"

"104. Steam vessels crossing. *Art. 19.* When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard shall keep out of the way of the other. (Aug. 19, 1890, c. 802, sec. 1, 26 Stat. 327.)"

"106. Vessel having right of way to keep course. *Art. 21.* Where, by any of these rules, one of two vessels is to keep out of the way the other shall keep her course and speed."

"Note. When, in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving way vessel alone, she also shall take such action as will best aid to avert collision. (See Articles 27 and 28 of May 28, 1894, c. 91, 28 Stat. 205.)"

"107. Crossing ahead of vessel having right of way. *Art. 22.* Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other. (Aug. 19, 1890, c. 802, sec. 1, 26 Stat. 327.)"

"108. Duty of steam vessel to slacken speed. *Art. 23.* Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse. (Aug. 19, 1890, c. 802, sec. 1, 26 Stat. 327.)"

Special Circumstances and General Prudential Rules.

(33 U. S. C., §§ 112, 121.)

"Sec. 112. Special circumstances requiring departure from rules. *Art. 27.* In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger. (Aug. 19, 1890, c. 802, sec. 1, 26 Stat. 327.)"

"Sec. 121. Additional precautions required generally. *Art. 29.* Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. (Aug. 19, 1890, c. 802, sec. 1, 26 Stat. 328.)"

"Whistle" Rule.

(33 U. S. C., § 113.)

"113. Sound signals of steam vessel indicating course. *Art. 28.* The words 'short blast' used in this article shall mean a blast of about one second's duration.

"When vessels are in sight of one another, a steam vessel under way, in taking any course authorized or required by these rules, shall indicate that course by the following signals on her whistle or siren, namely:

"One short blast to mean, 'I am directing my course to starboard.'

"Two short blasts to mean, 'I am directing my course to port.'

"Three short blasts to mean, 'My engines are going at full speed astern.' (Aug. 19, 1890, c. 802, sec. 1, 26 Stat. 328.)"

Federal Rules of Civil Procedure.

Rule 52. Findings by the Court.

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41 [illegible] 27, 1946, effective March 19, 1948.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 172

THE TEXAS COMPANY,

Petitioner,

v.

United States of America as Owner of the USS RUCHAMKIN and Ten Other Naval Vessels of the United States; and Evelyn Eckert, Administratrix of the Estate of Edward James Eckert, Jr., Deceased, et al.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF OF THE PETITIONER THE TEXAS COMPANY

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I. DO U.S NAVAL FORMATIONS HAVE A SPECIAL NAVIGATIONAL STATUS ON THE HIGH SEAS

The second, third and fourth questions presented in the Government's Brief in Opposition, although not enumerated in the petition itself, clearly demonstrate, we submit, the serious error committed by the court below. There are

three very important fallacies in these questions or bases of fault urged by the government and cited by the Court of Appeals when it held the WASHINGTON to blame for the violation of alleged legal duties with respect to vessels with which she did not collide. Those fallacies were recognized by the District Court.

FIRST. Although claiming privilege under the Starboard Hand Rule the Tactical Commanders treated the meeting between the tanker and the formation as one of Special Circumstances.

Ten minutes before the collision every naval vessel in the task group was ordered to and did slow down (their speed was reduced twice) *in order to allow the* WASHINGTON *to pass ahead of all the heavy vessels in the formation.* Those reductions of speed, executed ten minutes before the collision created a Special Circumstances situation between the formation and the tanker even if none had earlier existed. The government's brief attempts to confuse the relationship between the tanker and the formation (wherein there was no collision) with the situation between the tanker and the RUCHAMKIN. As between the colliding vessels a situation of special circumstances was created by the position of the RUCHAMKIN, completely hidden as it was from the WASHINGTON. *Lind* v. *United States* (2 Cir. 1946), 156 F. 2d 231, 233.

After the right of way had been granted to the WASHINGTON, the Screen Commander (as the District Judge found) made the grievous error of deliberately ordering the RUCHAMKIN up across the WASHINGTON's course at high speed when all other vessels were slowing down to allow the WASHINGTON to pass ahead. That order was grossly negligent, and as the District Court found, it violated the Special Circumstances and General Prudential Rules of the Road. The trial court held this negligent act was "so plainly perilous" that it was sufficient to account for the collision.

SECOND. A naval formation is not a unit under the Rules of the Road. The Starboard Hand Rule by its own verbiage applies to two vessels, not to a single vessel on one hand and a formation on the other.

"When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard shall keep out of the way of the other." (Aug. 19, 1890, c. 802, Sec. 1, 26 Stat. 327.) 33 U.S.C. 104.

A "vessel" we assume means *a* vessel, not a group or formation of self propelled vessels. By its terms that rule also requires "risk of collision" to exist before the rule comes into play. Risk of Collision is defined by the Rules:

"§101. Suggestion for ascertainment of risk of collision. Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist." (Aug. 19, 1890, c. 802, sec. 1, 26 Stat. 326.) 33 U.S.C. 101.

In other words, a vessel navigating the high seas does not have to run away from every navigation light visible to her starboard much less from every naval vessel or formation thereof. In this case the WASHINGTON was enveloped by the naval formation before the rules required her to avoid any light.

The District Court found:

"also, because of the eastwardly receding curve of the southerly end of the screen are, the tanker was not in a situation involving risk of collision with the flotilla until she was beyond the path of the southernmost ship of the screen, the CORRY, hence the tanker did not have the choice of skirting the flotilla. At all events neither

of the two left wing or southern vessels of the screen (the CORRY and the LLOYD) ever tendered collision * * *."

Further, assuming for argument sake that the Starboard Hand Rule did in fact apply to any of the naval vessels (other than the RUCHAMKIN) the WASHINGTON did not collide with them, consequently there was no violation of the Starboard Hand Rule. (*Palzgraf* v. *Long Island R.R. Co.*, 248 N. Y. 339, *Diamond State Tel. Co.* v. *Atlantic Refining Co.*, (3 Cir. 1953) 205 F. 2d 402.

THIRD. The navigation of naval vessels is governed by the Rules of the Road. Except for a self-serving definition of "Sea Manners" promulgated by the United States Navy in a war-time regulation, (See Government Ex. 5), there is no rule of law that gives a United States Naval formation a special status on the high seas. Rather than demanding privilege where none exists prudent commanders realize that if they want to preempt some twelve to fifteen square miles of ocean they had best send out pickets (as army convoys on the highways are careful to do) or else this "supership" of a formation had best maneuver so as not to envelop unwarned merchantmen.[1] Commodore Smith testified that the higher echelon of the Navy recognized this and found no better way to avoid collision:

"Q. I don't mean to, just to restrict you to Admiral Lanning.

A. It became principle, and it was one of the most difficult ones to arrive at, that a formation proceeding at sea with lights on, encountering a merchant vessel, should attempt to avoid the vessel regardless of rules

1. There was no effective warning to the WASHINGTON as she approached the formation. There were no picket vessels or any effective visual or radio warning. The only attempt to communicate with the tanker was by flashing light at a time *after* she had passed ahead of the FREMONT and that was for the sole purpose of reprimanding the WASHINGTON. (Pet. p. 39)

of the road priorities and—now you must understand that all officers in Tactical Command would not agree with this, but this did become the established practice, and to my knowledge by those who were experienced at that time, was the best practice.

Q. Now—excuse me.

A. You would try to avoid. There were many arguments concerning this and every new officer assigned to take Tactical Commands, not having one before, when that was told him, would raise the objection about, Well, that will confuse the approaching ship, and the answer to that is that if the action is taken at the first opportunity and you see the ship where you see some distance away, considerable distance away, it will not confuse him, but to let the ship, the merchant ship, who does not know that he is approaching a formation under one command, to whom it looks—and I have seen them, like a little fishing vessel here and fishing vessel there, and another one over here, and Atlantic City in the middle of it, if it's a big formation well lighted up—it just seems to be a thing not contemplated nor could it be contemplated by the rules of the road because the formations are so different.

Then, so the answer to that objecting O.B.C., would be, if you do not or cannot move, change the course and speed of your formation because you think you should not, and you have the right-of-way by, according to—you are the privileged ships at that moment by rules of the road, then you should notify the stranger what you are—at least give him warning of what he is heading into, and thus help him avoid that. Then when they objected to that, or raised objections to it, the answer would come right back to it, if you know of a better way of doing it than avoiding it, you will have to tell me, and there were none that, speaking generally, could ever advance a better method of avoiding collisions at sea with approaching vessels." (Trial Minutes, pp. 625, 626.)

Like all other vessels, United States Naval vessels are and should be governed by the International Rules of the Road while navigating on the high seas. Some years ago the English Navy also attempted to grant its formations special privilege and status on the high seas in a similar self-serving definition of Sea Manners. But that declaration was declared violative of the International Rules of the Road and was frowned upon by the British courts. The H.M.S. King Alfred 1913 Prob. Div. 102, 30 Times LR 102, The Dominion Monarch 71 LL. L Rep 110, The F. S. Wolfe, 78 LL. L Rep 486, THE SCOTTISH MUSICIAN 72 LL. L Rep 284.

Although questions 2, 3 and 4 presented by the Government's Brief in Opposition were not included in the petition, the petitioner respectfully urges that this court pass upon the legality of the privileged status granted to U.S. Naval formations by the court below, since if that decision is allowed to stand U.S. Naval formations will have a special navigational status denied the British Navy under a similar declaration of manners.

II. IN REM LIABILITY

The Government's version of the "First Question Presented" by the petition herein, attempts to separate the negligent Tactical Commanders from their flagships FREMONT and HOLLIS. These negligent naval officers are referred to in the Government's Brief (p. 2) as "riding as a passenger aboard it, * * * neither a member of its crew nor responsible for its navigation * * *". This characterization is in shocking disregard of (a) the Government's own Naval Regulations, (b) the uncontradicted testimony of one of the Navy's distinguished retired officers and (c) the other evidence in the case.

The Tactical Commanders were no more passengers than were the commanding officers on board those naval vessels. Webster defines a passenger as "a passer through

or passer by, wayfarer, traveler" also as "a member of a racing crew whose weight retards the boat more than its power adds to its speed; hence an inefficient member of the team (sporting slang)".

Navy Regulations spell out the duties of Tactical Commanders and under the heading "Responsibility and Authority of a Commander" Sec. 0502, sub. 1, provides:

> "1. A commander shall be responsible for the satisfactory accomplishment of the mission and duties assigned to his command. His authority shall be commensurate with his responsibilities, subject to law and these regulations."

Section 0512 thereof further states that—

> "in matters of general discipline, the staff of a commander embarked * * * shall be subject to the internal regulations and routine of the ship. They shall be assigned regular stations for battle and emergencies. Enlisted persons serving with the staff shall be assigned to the ship for administration and discipline, except in the case of staffs embarked for passage only * * *".

This section recognizes that there may be staffs which are "embarked for passage only" but such was not the fact in this case.

These flag officers may not have been a part of the permanent ship's company of the FREMONT or the HOLLIS on other occasions when those vessels were not flagships, but for the purposes of the voyage out of which this litigation arose, they were certainly included in Benedict's definition of "mariners" as that term is used in defining a vessel's crew under the admiralty law:

> "The term mariner includes all persons employed on board ships and vessels, during the voyage, to assist in their navigation and preservation or to promote the

purposes of the voyage. Masters, mates, sailors, surveyors, carpenters, coopers, stewards, cooks, cabin boys, engineers, pilots, firemen, deck hands, wireless telegraph operators, waiters,—women as well as men,—are mariners." Benedict on Admiralty (Vol. 1, p. 243).

The evidence demonstrates that these negligent tactical officers were responsible for and controlled the navigation of their flagships. See also Admiral Nimitz's article Petition, p. 18. Within the 20 minutes preceding the collision the FREMONT obeyed the orders of the O.T.C. four times and the HOLLIS obeyed the orders of the Screen Commander three times. This was entirely in accord with the provisions of Sections 0502 (1), 1345 and 0751 (o) of the U.S. Navy regulations.

Commodore Oscar Smith, a retired naval officer whose testimony is absolutely uncontradicted in this respect, outlined in detail the responsibilities of the commanding officer of a vessel and of his senior the Tactical Commander. He pointed out that when a vessel operates independently, its commanding officer is in full charge of its navigation; that as soon as that vessel reports to a tactical senior, the responsibility is shared by the vessel's commanding officer with such senior. Commodore Smith described this as follows:

"Now the Screen Commander also has tactical command of that ship. It looks like dual authority. Actually it isn't. The Tactical Command of the captain, when he is operating in a screen or in and—under another Tactical [617] Commander is merely restricted to the movements of his ship and screen guide movements are handed down to him by the senior officer who will tell him ship's right, ship speed 15, take formation X, but the captain issues the order to the wheel on his own ship in order to accomplish these things, or the orders to the engine". Govt. App. p. 141a.

As to this control by the Tactical Commander, section 0751 (o) of the U.S. Navy Regulations provides:

> "When under the tactical command of a senior, [a vessel's commanding officer shall] perform no independent evolution without orders from such senior, except as necessary to avoid collision or imminent danger."

Thus for the HOLLIS and the FREMONT, the ship's captain would "issue the orders to the wheel to accomplish" the orders of the senior—but the captain of each of these vessels knew that he was controlled in its navigation by the tactical seniors. (Trial minutes p. 618)

The attempt of the Government to separate the negligent flag officers from the vessels which the Navy had furnished them to carry out their assigned duties, for which they were responsible under Navy Regulations and from and through which all of their orders emanated, ignores the uncontradicted evidence and the applicable rules defining their duties, responsibilities and authority.

The Government admits that it is liable for the negligence of the flag officers that contributed to the collision herein and also to liability in rem for the negligence of government personnel in the operation of any naval vessel here involved "if the negligence constituted personal acts of the ship for which, as a juristic person, she is legally responsible." (Government Brief, pp. 11, 12) It contends however that its FREMONT and HOLLIS should not be held liable in rem because the flag officers were merely "riding" as "passengers". It is doubtful if the flag officers themselves would characterize themselves as "riders" or "passengers". They never testified that they were, and it would be very surprising indeed if the U. S. Navy would permit "passengers" to take a task group sixty miles to sea and back or if hundreds of naval personnel on the vessels comprising this task group would have slowed their vessels or performed the maneuvers on this occasion on

instructions or orders of "passengers". In fact the U.S. Navy Regulations prescribe with respect to these "passengers" that:

> "The senior officer present is responsible for the safety of the units in company, and shall, at sea, direct the course to be steered and the disposition to be employed." Sec. 0611 (2)

The positon of the flag officers on board their respective flag ships herein was closely analogous to that of the compulsory pilot in the CHINA, 7 Wall 53. The flag officer is just as necessary for the proper operation of the intricate naval maneuver as the pilot is to aid the captain in navigating his ship in unfamiliar and restricted waters. In either case the captain has the same right and duty to intervene to protect the safety of his vessel from imminent danger as to which either the pilot or the flag officer fails to take proper or timely action. Since this court has held that the fault of a compulsory pilot renders the merchantman on which he is stationed liable in rem, it is contrary to reason not to impose the same liability on a naval vessel for the negligence of her flag officers.

The relationship of a pilot to his vessel is defined by Griffin on Collision:

> "His services 'are as much for the benefit of the vessel and cargo as those of the captain and crew. His compensation comes from the same source as theirs. Like them, he serves the owner and is paid by the owner' (the CHINA, 7 Wall. [74 U.S.] 53, 67 [1869]; cf. *Workman* v. *New York City*, 179 U.S. 552 [1900]).
>
> "If the ship is negligently navigated, in obedience to a wrong order of the pilot, not only is her owner responsible for a resulting collision, but the vessel is liable 'as the offending res' (the MAREN LEE, C.C.A. 2, 278 Fed. 918 [1922]). This accords with the general principle that liability in rem arises against a vessel which is navigated negligently by a person lawfully in

charge of her. Hough, J., in the EDWARD G. MURRAY, C.C.A. 2, 278 Fed. 895 [1922]:"

The English cases relied upon by the Government are not controlling because they apply the British law which "does not adopt the theory of personification of the vessel." (Griffin on Collision, p. 447)

The case of *Publicover* v. *Alcoa S.S. Co.*, 168 F2d, 672, involves the responsibility of a private shipmaster upon whom purely military duties respecting other vessels were imposed. In the case at bar the flag officers were charged with full navigational control as well as military responsibility for the other naval vessels in company. This distinction apparently satisfied the Court of Appeals for the Second Circuit, for within two years after deciding the "Publicover" case, supra, it was presented with the "Australia Star-Hindoo", involving facts analogous to the instant case. It did not hesitate to enforce in rem liability. If the "Publicover" is in fact in point in an all-Navy case such as this, then the "Australia Star" and "Canadian Aviator" decisions must be reversed.

There is, we submit, no valid distinction between the misguidance of the Cavelier in *Canadian Aviator Ltd.* v. *United States*, 324 U.S. 215 (1946) and the Screen Commander's misguidance of the RUCHAMKIN, or between the failure properly to guide the HINDOO and warn the AUSTRALIA STAR in *U.S.* v. *The Australia Star* (2 Cir.) 172 F. 2nd 472, and the failure of the FREMONT properly to guide the RUCHAMKIN. The duty to care for the RUCHAMKIN in each case (FREMONT and HOLLIS) was crystal clear. The commander of the unfortunate RUCHAMKIN relied upon this duty as he raced across the course of the WASHINGTON intently watching the FREMONT and the HOLLIS and listening for orders emanating from those vessels. He testified he would have turned around and run the other way had he known the WASHINGTON was there. (Trial M. p. 471) If in rem liability is not to be imposed then this court should explain the distinction between a compulsory pilot and a compulsory flag officer because in the evidence there was none.

III. SCOPE OF REVIEW BELOW

The Petition for Certiorari listed twelve occasions in which the Court of Appeals reversed factual findings of the District Court, Pet. pp. 23-25. These reversals are admitted and it is conceded that the law requires an appellate court to determine that the trial court's findings were "clearly erroneous" before the Appellate Court can reverse such findings. It is claimed, however, that these are not really new findings—but only different findings, based upon "other" facts found by the District Court.

In its Brief in Opposition, the Government has stated that the Appellate Court:

> "* * * did not merely substitute its own view of the facts for that of the District Court. Rather, it held that the conclusions drawn by the District Court from findings as to what the WASHINGTON saw, or should have seen, could not be reconciled with its findings as a whole." (P. 19-20)

The bald fact is, however, that for the Court of Appeals to reverse the District Court, it had to embrace the testimony of the tanker's litiguous lookout and to disregard the testimony in open court of her mate and of every naval officer who was questioned concerning the appearance of the lights on this particular night. The overwhelming weight of the evidence was that the lights of the RUCHAMKIN were not distinguishable from the bridge of the tanker until it was too late to avoid a collision. *Only* Upton claims to have identified the lights of the RUCHAMKIN.

Upton testified that he saw and reported (by a bell from the forecastle) the lights of the RUCHAMKIN some 15 minutes before the collision (Gov't. Brief in Opposition p. 5). At this time the RUCHAMKIN was over seven miles away and was separated from the tanker by the entire

naval formation as to which Captain Jackson of the RUCHAMKIN testified.

> "I saw a great many lights * * * from the ships in the main body, which included cargo lights, porthole lights and mast lights or what have you from the formation * * * you must realize that there were several other ships in the immediate vicinity all of which were showing their lights. Also you must remember that the ship we now know to be the CAPRICORNUS was for a considerable period of time between me and the WASHINGTON. * * *"

> "Also that these all of these ships that I was passing, as I passed them were showing similar lights to the WASHINGTON. Also that there were a great many lights over there and to pick out any one individual set of lights particularly when you didn't know that there was a stranger there, would have been most difficult." (Government's Appendix 302a, 304a).

Upton refused to appear and testify upon the trial. His Coast Guard testimony was introduced in his absence. Unfortunately other conflicting testimony in his examination before trial in his personal injury suit could not be offered since that suit was not tried. The Court below will have the dubious pleasure of reconciling his conflicting testimony with the balance of the evidence on this subject when his pending personal injury suit is tried at some future date.

The Government's brief and particularly its questions nos. 2, 3 and 4 assume the facts *as known by the naval officers* but not as they appeared to an on-coming, uninformed merchantman at two o'clock in the morning. The forty copies of the Notices to Mariners mentioned in the Government's Brief, p. 4, were mailed while the WASHINGTON was at sea. They referred to amphibious landings on shore at a point that did not appear on the chart referred

to in the notice, and which was over 50 miles away from the point of collision. Had the tanker received the notice, and had the notice accurately described where the Task Group would be, the evidence nevertheless established that the formation was not where the notice said it would be.

Furthermore, the lights of this formation were only a part of a series of many lights visible on the horizon to the mate of the tanker. There was nothing about the lights that disclosed that they were operating as a coordinated unit. They were of no distinctive color, and from the level from which they were seen by the mate on the bridge of the tanker, they assumed no particular pattern. They were described as looking like a village and were merely a portion of the total number of lights which were visible to any merchant ship, domestic or foreign steaming up the coast. It is significant in this regard that the District Court considered this testimony together with the exhibit introduced in evidence by The Texas Company, as to the appearance of these lights this night, whereas the Chief Judge of the Court of Appeals, who wrote its opinion, refused to view the exhibit which was in evidence before the District Court. (Texas Exhibit 17)

In the Brief in Opposition filed by the death claimants, the sole point is whether the Court of Appeals exercised the proper scope of judicial review. Here we find the same reliance upon the testimony of the lookout Upton as was present in the Government brief. The death claimants, however, also rely upon a diagram in their brief below which depicts the vessels as seen from the air in daylight and which ignores the only basis that the tanker's mate had in navigating his vessel—the appearance of lights at sea at night on a horizontal plane.

The Circuit Court of Appeals substituted its own experience in seamanship for that of the licensed personnel present, and reversed the well supported findings of the District Court that neither the WASHINGTON nor RUCHAMKIN should be faulted for the action taken by them to avoid

collision when they became visible to each other. The District Court found that when the two colliding vessels more or less simultaneously sighted one another (at a distance of about one thousand yards and approaching at a relative speed of some thirty knots) there was no time for any different evasive action than that which the two shipmasters attempted. No evidence was cited by the Court below to support this reversal of fact of the District Court.

This review by the Court below is in sharp contrast to the appellate review of a similar factual situation by the Court of Appeals for the Second Circuit in the Seawind, 242 F. 2d 368 (1957) where the court said at page 369:

> "The trial judge concluded that at the time the light became visible to those aboard the SEAWIND she was already in extremis and the sounding of the single blast could not be taken as a fault in such an emergency. * * * In any event the SEAWIND did not stop her engines and the trial judge found in substance that this again was a matter of judgment and he said that his own 'predisposition' was that 'she could keep her way, which was not very great, to avoid the set of the wind and the tide.'
>
> "We cannot say that these findings are clearly erroneous. *McAllister* v. *United States*, 348 U.S. 19, 75 Supreme Court 6, 99 Law Ed. 20; *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 68 Supreme Court 525, 92 Law Ed. 746."

The death claimants unable to find any comfort respecting the *McAllister* case in the opinion of the Court of Appeals, assert that the learned court below "stated orally upon the argument" that it would not reverse unless the District Court's opinions were "clearly erroneous". Petitioner's counsel has no recollection of any such oral statement by the Appellate Court.

The most than can be said for the scope of review used by the court below is that that court evidently felt that the case should have been decided differently than the

District Court. This is not a sufficient basis for reversal. *McAllister* v. *United States*, *supra*, and *Lavender* v. *Kurn*, 327 U.S. 645, 653.

CONCLUSION

It is submitted that the petition and reply brief have demonstrated that the opinion of the Court of Appeals (a) disregarded the scope of review prescribed by this court; (b) that it is in conflict with a decision of this court and of the Courts of Appeals with respect to in rem liability; (c) that it affords a special navigational status to U.S. Naval formations; (d) that it imposes liability for alleged navigational errors with respect to vessels which did not collide (contrary to the opinion of the Courts of Appeals for the Second and Third Circuits in the *Steel Inventor*, C.C.A. 2d 1939, 43 F 2d 958 and *Diamond State Telegraph Co.* v. *Atlantic Refinery Co.* (3 Cir.) 205 F 2d 402). Certiorari should accordingly be granted.

Respectfully submitted,

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APPENDIX TO REPLY BRIEF

COMMODORE OSCAR SMITH, a Naval Officer of considerable experience, testified with respect to the responsibility and authority of the flag officers as follows: (Trial M. 615)

"Q. Now, Commodore, in this case, there has been testimony that these vessels and certain other vessels were all a part of a Task Group which has been designated as eighty-six point two under the command of an officer whose flagship was aboard—whose flagship was the USS FREMONT. His name was Captain Day. Captain Day has also been referred to as the O.T.C. or Officer in Tactical Command. Additionally, we are told that there is a screen commander, and, of course, there are commanding officers of the various individual ships. Now would you outline briefly for us the authority and responsibilities that those various jobs or officers hold?

A. The Group Commander, the Task Group Commander is the officer who commands the entire formation. He probably—I don't know whether he did in this case or not—but he probably wrote the Operation Order. He could have an Operation Order. I do not know that any such orders in [616] existence in this individual case you mentioned, but he could have written an Operation Order and if it were a large, important operation he would have done so.

Then in that order he would have detailed these—he had the power, he had the command authority—to delegate the duty of command of the main body to one officer. Normally he would assign that to himself or retain it in his own hand. He would delegate the authority to command the screen and control its tactics to the senior officer of the ships in the screen, and he would be designated Screen Commander.

Now the individual ship. I am going to start from the bottom and work up as regards the Tactical Command. The individual ships which comprise these various ships have on board a Commanding Officer, who is the Tactical Commander of that ship at all times. By that I mean that he uses the facilities granted him by the Navy Department that are placed on that ship to navigate it, make it stop, to make it speed up, to make smoke, do any simple thing necessary for it to behave and do the tasks to which, are assigned to it. But he has over him the Screen—I am assuming it will take a screening vessel—he would have over him a Screen Commander.

Now the Screen Commander also has tactical command over that ship. It looks like dual authority. Actually it isn't. The Tactical Command of the captain, when he is operating in a screen or in an—under another Tactical [617] Commander is merely restricted to the movements of his ship and screen guide movements are handed down to him by the senior officer who will tell him ships right, ship speed fifteen, take formation X, but the captain issues the order to the wheel on his own ship in order to accomplish these things, or the orders to the engine.

Similarly, over the Screen Commander you have the Officer in Tactical Command—designation I believe was originated because of the necessities of a formation having an officer specifically designated to have all authority over everything in that screen that dealt with the operations as distinct with the administrative functions, because frequently there will be a senior officer traveling in the formation who may have the, might be the Chief of Naval Operations—actually if the Chief of Naval Operations wished to he could relieve all of those people from their commands and take over, but of course, he probably wouldn't, but, so they designate this man as officer in Tactical Command and he is charged with the responsibility over those.

So now we have a triple authority over the ship, but by having delegated his authority over the screen to the Screen Commander, you end up only with three. However, this does not change his authority to step in at any time and issue, override the Screen Commander, and issue a direct order, but it is bad naval ethics to do it.

(Trial M. 618)

Q. Now—

A. May I finish, because we haven't developed the Group Commander. The Group Commander may be, or may not be the same man. The Group Commander, once he has issued his Operation Order, assuming he is a different man, sits in his cabin or stays on the bridge, watches what goes on as far as the individual formation with which he is connected, but he may have other forces in this formation. He may have a unit doing this, or another unit doing that under the same group, and when they bear the same relationship to him that these other commanders do, while the fact that they are out of sight means nothing to him.

Q. Now would you say that these officers have a responsibility toward the unit that they command?

A. When you give a man command, an authority over a ship or man in the Navy when he accepts that command, he also accepts a double responsibility, a responsibility to use the forces entrusted to him to the best of his ability to carry out the orders received from higher authority, and he has the responsibility which is to safeguard, to keep informed and to bear in mind at all times the forces over whom he has taken command.

Q. Now, Commodore, in this particular instance the RUCHAMKIN was one of the vessels assigned to the Task Group Commander and proceeded independently of the

formation, which [619] we have sketched on the board, from the Hampton Roads area to Camp Pendleton, where it was to undergo some beach reconnaissance mission or pick up some people from the beach and then proceed out to sea and join the formation.

Now up until the time that she had reported to the Screen Commander under whose control or guidance would that vessel be?

A. Under the Commanding Officer, immediate Tactical Command.

Q. Now after she reported to the Screen Commander, which in this particular instance she did by phoning the Screen Commander on the radio telephone, and saying that she was ready to join the formation and she was then ordered to proceed to a position from which to take her station, she was told twice to expedite in doing that; now under whose control or guidance would that vessel be at that point or after that report?

A. The Screen Commander.

Q. Now would it make any difference to your answer, does it change your answer to know the fact that the Screen Commander ordered her not to take a specific station but to go to a point, an undesignated point from which to take her station?

A. None whatever.

With respect to the responsibility and authority of these naval officers the Navy Regulations provide as follows:

"0332. *Responsibility and Authority of a Commander.*

1. A commander shall be responsible for the satisfactory accomplishment of the mission and duties assigned to his command. His authority shall be commensurate with his responsibilities, subject to law and these regulations.

He shall exercise authority normally through his immediate subordinate commanders, but may, should he deem it necessary, communicate directly with any of his subordinates.

2. Subject to orders of higher authority, a commander shall issue such regulations and instructions as may be necessary for the proper administration and operation of his command.

3. A commander shall hold the same relation to his flagship, or to a station in which his headquarters may be located, in regard to its internal administration and discipline, as to any other ship or station of his command."

"0310. *Authority and Responsibilities of Officers of a Staff.*

1. The chief of staff, or chief staff officer, under the commander, shall be responsible for supervising and coordinating the work of the staff, and shall be kept informed of all matters pertaining to that work. All persons attached to the staff, except a deputy responsible directly to the commander, shall be subordinate to the chief of staff or chief staff officer while he is in the execution of the duties of his office.

2. The officers of a staff shall be responsible for the performance of those duties assigned to them by the commander and shall advise him on all matters pertaining thereto. In the performance of their duties, they shall have no command authority of their own with respect to the remainder of the command, but shall at all times, in carrying out such duties, act for and in the name of the commander."

"0312. *Staff Embarked.*

In matters of general discipline, the staff of a commander embarked and all enlisted persons serving with

the staff shall be subject to the internal regulations and routine of the ship. They shall be assigned regular stations for battle and emergencies. Enlisted persons serving with the staff shall be assigned to the ship for administration and discipline, except in the case of staffs embarked for passage only, and provided in that case that an organization exists and is authorized to act for such purposes."

"*0611. Readiness and Safety of Forces.*

1. The senior officer present shall prescribe the conditions of readiness of all the forces present and under his authority.

2. The senior officer present is responsible for the safety of the units in company, and shall, at sea, direct the course to be steered and the disposition to be employed.

3. To the extent which the situation demands, the senior officer present shall be prepared for action, and shall guard against surprise attack. With the means at his disposal, he shall put into effect such measures as are necessary to minimize the possibility of the undetected approach of hostile, air, surface, or subsurface forces, and shall take all action possible to destroy such hostile forces prior to their reaching attack positions."

"*0751. Safe Navigation.*

1. The commanding officer is responsible for the safe navigation of his ship or aircraft, except as prescribed otherwise in these regulations for ships at a naval shipyard or station, in drydock, or in the Panama Canal. In time of war, or during exercises simulating war, the provisions of this article pertaining to the use of lights and electronic devices may be modified by competent authority.

2. The commanding officer of a ship and, as appropriate, of an aircraft, shall:

(a) Preserve all information that he receives or is able to procure concerning safe navigation.

(b) Insure that the required charts, hydrographic and aeronautic publications in effect are on board and corrected to date.

(c) Make every effort to obtain from reliable sources, foreign or otherwise, all information that will aid him in any case of doubt about safe navigation over routes he proposes to take or ports he intends to visit.

(d) Keep himself informed of the error of all compasses, and other devices available as aids to navigation.

(e) Immediately before leaving, and as soon as practicable after entering port, require the navigating officer to ascertain the draft of the ship, forward and aft, and enter it in the log.

(f) Have the anchors ready for letting go when the proximity of land or the depth of water is such that there is danger of grounding.

(g) Insure that lookouts are proficient in their duties, and are stationed as necessary in accordance with the best practice of seamen, having in mind any special conditions, the results to be accomplished, and the physical limitations of personnel. When underway during low visibility, or when approaching or traversing congested traffic lanes or areas, at least one lookout shall be stationed in the bow as far forward and as near the water as is feasible.

(h) Require that available electronic and other devices appropriate as aids to safe navigation be employed during periods of low visibility and at other times when needed.

(i) Insure that efficient devices for fixing the ship's position and for ascertaining the depth of water are employed when underway on soundings, entering or leaving port, or upon approaching an anchorage, shoal, or rock, whether or not a pilot is on board. If circumstances warrant, he shall reduce speed to the extent necessary to permit these devices to be operated efficiently and accurately.

(j) Observe every precaution prescribed by law to prevent collisions and other accidents on the high seas, inland waters, or in the air.

(k) When underway in restricted waters or close inshore, and unless unusual circumstances prevent, steam at a speed which will not endanger other ships or craft, or property close to the shore.

(l) Take special care that the lights required by law to prevent collisions at sea, in port, or in the air are kept in order and burning in all weathers from sunset to sunrise, and require that means for promptly relighting or replacing such lights are available.

(m) Keep a night order book, which shall be preserved as part of the ship's official records, in which shall be entered the commanding officer's orders with respect to courses, any special precautions concerning the speed and navigation of the ship, and all other orders for the night for the officer of the deck.

(n) When under the tactical command of a senior, promptly give notice to such senior and to the ship or aircraft endangered if he finds that the directed course is leading his ship or aircraft, or any other ship or aircraft, into danger.

(o) When under the tactical command of a senior, perform no independent evolution without orders from such senior, except as necessary to avoid collision or imminent danger."

"*1345. Command of a Task Force.*

A commander in chief and, when empowered by the Secretary of the Navy, any other naval commander, may detail in command of a task force, or other task command, any eligible officer under his command whom he desires, and any officer so detailed shall have the same authority

and receive the same obedience from all officers attached thereto, that he would be entitled to receive if his commission were the highest or the oldest. All orders issued under the authority of this article shall continue in effect after the death or disability of the officer issuing them until revoked by his successor in command or by higher authority. The powers delegated to a commander by this article are not conferred on any other officer by virtue of the fact that he is senior officer present."

NAVAL TERMS DICTIONARY — NOEL 1952

Definition of flagship

"the ship from which an admiral or other unit commander flies his flag and from which he exercises command."

Office - Supreme Court, U.S.
FILED
AUG 13 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~1067~~ 172

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Petitioner,

v.

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and

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENTS ALLRED, BODE, BRIGHT, ECKERT AND FULWILER IN OPPOSITION

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BRIEF FOR RESPONDENTS ALLRED, BODE, BRIGHT, ECKERT AND FULWILER IN OPPOSITION

Opinions Below

The opinion of the United States District Court for the Eastern District of Virginia (Pet. App. 29-41) is reported at 141 F. Supp. 97. The opinion of the United States Court of Appeals for the Fourth Circuit (Pet. App. 42-53) is reported at 241 F. 2d 849.

Jurisdiction

The judgment of the Court of Appeals was entered on January 25, 1957. A timely petition for rehearing was denied by order entered March 11, 1957. The petition for a writ of certiorari was filed on June 7, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Whether there is *in rem* liability of a vessel for the negligence of officers in command of a naval task group stationed aboard the vessel, but not in command of the vessel.

2. Whether the United States Court of Appeals can reverse a clearly erroneous decision of the District Court when from facts as found by the District Court its conclusions are erroneous.

Statutes and Regulations Involved

The applicable statutes and international rules involved in this proceeding are set forth at pages 54-59 of petitioner's appendix.

Statement

This brief is submitted on behalf of the following respondents: Evelyn Eckert, as Administratrix of the Estate of Edward James Eckert, Jr., Deceased; Parley Bright, as Administrator of the Estate of Morton Bright, Deceased; Catherine Bode, as Administratrix of the Estate of Ralph J. Bode, Deceased; Barbara Allred, as Administratrix of the Estate of Kenneth V. Allred, Deceased; Margaret Fulwiler, as Administratrix of the Estate of John T. Fulwiler, Deceased.

The actions involved herein arose out of a collision that occurred on November 14, 1952, between the Texas Company's SS "WASHINGTON" and the USS "RUCHAMKIN", one of eleven naval vessels engaged in training maneuvers in the vicinity of Cape Henry, Virginia, at approximately 2:15 A. M. The "WASHINGTON" was a tanker of the T-2 type and the "RUCHAMKIN" a destroyer. Prior to the collision, the USS "RUCHAMKIN" was steaming on a westerly course, paralleled to and on the extreme right of a naval formation. The SS "WASHINGTON", south of the formation, was steaming on a northerly course. The SS "WASHINGTON" entered the formation from the left side, crossed in front of all of the heavy ships of the formation and struck the USS "RUCHAMKIN". Neither vessel reduced speed prior to the collision.

The Second Mate of the "WASHINGTON" was on watch prior to and at the time of the collision. He remained in the wheelhouse and did not go out on the wings of the bridge where he could have had an unobstructed view. He admits that he did not pay attention to his radar (Pet. App. 47). Visibility was excellent (Pet. App. 45). Although the Second Mate of the "WASHINGTON" admitted seeing the red side lights of two of the vessels of the naval formation and stated that he altered course without giving the required whistle signals, he denied seeing the other vessels of the formation which were much closer to him. He made this denial although he passed between two of the vessels, only 1,000 yards ahead of one and 1,200 to 1,500 yards ahead of another, known as the "CAPRICORN" (Pet. App. 33, 47). He made a second change in course without signalling as required by the International Rules of the Road. Five to ten minutes prior to the collision, the lookout on the "WASHINGTON" sighted the "RUCHAMKIN" to starboard and signalled the bridge but his signal was ignored by the Second Mate (Pet. App. 48). Incidentally, to the lookout it was apparent that the vessels when first sighted

to the starboard were naval vessels because of their formation and because they were signalling to each other by blinker lights (Pet. App. 45). Even if the "RUCHAMKIN" was not sighted until after the tanker crossed the other vessels, including the "CAPRICORNUS", there was time to avoid the collision if reasonable care had been exercised since several minutes elapsed from the time the "WASHINGTON" crossed the path of the "CAPRICORNUS" until the collision. This time was sufficient to effect an alteration of the course of the "WASHINGTON" (Pet. App. 49).

At a consolidated hearing of cross libels *in rem* and *in personam* filed by the owners of both vessels and suits for damages for wrongful death filed against the Texas Company by the representatives of seven deceased soldiers the District Court found the "RUCHAMKIN" guilty of negligence and exonerated the "WASHINGTON". The actions for wrongful death were dismissed. The government and five of the wrongful death claimants appealed. The Court of Appeals unanimously reversed the District Court and found that the "WASHINGTON" was also at fault. It held the "WASHINGTON" at fault for failure to observe the starboard hand rule both in respect to the naval formation as a whole and as to the vessels within the formation (Pet. App. 44-45). It also held that the "WASHINGTON" failed to maintain a proper lookout (Pet. App. 47-49) and found that the "WASHINGTON" should have sighted the "RUCHAMKIN" in time to avoid the collision (Pet. App. 48-49). The Court of Appeals also decided by a majority of the Court that the vessels of the naval formation on which the officers in command of the naval task group were stationed, which officers were not in command of the vessel, could not be held to *in rem* liability for the negligence of these officers (Pet. App. 50-51).

Argument

Respondents address themselves only to the second question presented. The first question concerns only petitioner and respondent United States of America.

Petitioner contends that the Court of Appeals for the Fourth Circuit did not apply the proper standard to its review of the decision of the District Court. This contention is without foundation. The Court of Appeals at the oral argument stated the standard of its review of the findings of the District Court on the facts. It explicitly stated that it would only reverse the District Court on the facts if the findings were clearly erroneous and further stated that the appeal would not be considered a trial *de novo*. A reading of the Court's opinion (Pet. App. 42-53) shows that any time the Appellate Court made a finding of fact contrary to that of the District Court, it did so because based on other facts as found by the District Court itself, the District Court was clearly erroneous. Thus the Court of Appeals concluded that the District Court was clearly erroneous in absolving the "WASHINGTON" from fault. On the facts found by the District Court, even if the "WASHINGTON" did not discover the "RICHARDS" until it crossed the "CARNEGENUS", the Court of Appeals held that there was sufficient time to avoid the collision in the exercise of reasonable care on the part of the "WASHINGTON" (Pet. App. 49).

The Court of Appeals also found that the District Court was clearly erroneous in finding that the "CARNEGENUS" shut off the view of the "RICHARDS" from the "WASHINGTON" (Pet. App. 48). Here again the Court of Appeals based its finding on the position of the vessels, their size and speed as found by the District Court. Based on its own findings, the District Court is clearly erroneous.

When the Court of Appeals held that the explanation that those on the "WASHINGTON" thought that the naval

vessels were fishing-boats was not convincing, it in effect held that the District Court was erroneous as a matter of law (Pet. App. 45). The Court of Appeals also found the District Court to be clearly erroneous in its rejection of the testimony of Upton, lookout on the "WASHINGTON". It held there was "no reason why it should not be accepted" (Pet. App. 48).

Thus in each instance where the Court of Appeals made a finding contrary to that of the District Court, it did so within the scope of its authority.

The Court of Appeals also found error in matters of law. The District Court failed to apply the proper rules of law. It erroneously failed to apply the starboard hand rule of the International Rules of the Road, 33 U. S. C. Sec. 104, and it also erroneously failed to hold that the "WASHINGTON" was obligated to comply with the rule relating to whistle signals on changing course, International Rules of the Road, 33 U. S. C., Sec. 113.

Petitioner doubts the ability of the Court of Appeals to understand the facts of this case, contending that the facts are so complicated that the Appellate Court cannot determine that the District Court was in error. It alleges that the Appellate Court only considered the Brief (with Appendix) and Reply Brief of each of the parties and the oral argument, whereas the trial court allegedly thoroughly examined the many depositions introduced at the trial. Respondents do not have petitioner's source of information as to the deliberations of the Court of Appeals and therefore cannot assert that the Learned Court did not read the entire record. (The appendices were in themselves very detailed.) Surely the Court of Appeals is as able as the District Court to determine the credibility of witnesses who did not appear before the District Court and whose testimony was furnished by deposition. The Court of Appeals held the District Court in error in dis-

regarding the testimony of the lookout, Upton, which was entirely reasonable and was given shortly after the collision at the Coast Guard Hearing" (Pet. App. 48). The testimony was corroborated by the helmsman.

The Court of Appeals is also able to understand the details of naval maneuvering, Navy regulations and training, and the motives of the naval exercise, all of which are referred to by petitioner at page 22 of its petition. These details are unimportant in determining the negligence of the tanker "WASHINGTON" in steaming into a naval formation or any formation of vessels on crossing courses.

The only possible conclusion based on the facts is that the tanker "WASHINGTON" did not keep a proper lookout. If one had been maintained, the "WASHINGTON" would have discovered the "RICHAMKIN" in ample time (Pet. App. 48).

The Court of Appeals applied the proper standards to its review and there are no reasons for granting the writ of certiorari.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted.

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FILED
JUL 8 1957
JOHN T. FEY, Clerk

No. 1057-172

In the Supreme Court of the United States

OCTOBER TERM, 1956

THE TEXAS COMPANY, *Petitioner*

v.

UNITED STATES OF AMERICA AS OWNER OF THE *USS Ruchamkin* AND TEN OTHER NAVAL VESSELS OF THE UNITED STATES; AND EVELYN ECKERT, ADMINISTRATRIX OF THE ESTATE OF EDWARD JAMES ECKERT, JR., DECEASED, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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The opinion of the United States District Court for the Eastern District of Virginia (Pet. App. 29-41) is reported at 141 F. Supp. 97. The opinion of the United States Court of Appeals for the Fourth Circuit (Pet. App. 42-53) is reported at 241 F. 2d 819.

JURISDICTION

The judgment of the Court of Appeals was entered on January 25, 1957. A timely petition for rehearing was denied by order entered March 11, 1957. The petition for a writ of certiorari was filed on June 7, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in a proceeding in admiralty, a vessel can be held liable *in rem* for the personal negligence of a tactical officer riding as a passenger aboard it, who is neither a member of its crew nor responsible for its navigation, and whose negligence does not involve or affect the navigation of that vessel, but consists solely in a failure to warn the crew of another vessel of an impending collision.

2. Whether as a matter of law the tanker *Washington*, encountering the lights of a naval formation off its starboard bow, was obliged by the Rules of Navigation to avoid, if possible, crossing in front of or between the vessels of the formation.

3. Whether as a matter of law the *Washington*, having crossed the course of such a naval formation, was required by the Rules of Navigation, to notify vessels of the formation, on intersecting courses, of impending course changes, by means of the statutorily prescribed whistle signals.

4. Whether in the circumstances of this case the *Washington* maintained a proper lookout so as to avoid collision with vessels having the right-of-way over her.

STATUTES AND REGULATIONS INVOLVED

The applicable statutes and international rules involved in this proceeding are set forth at pages 54-59 of petitioner's appendix.

STATEMENT

This case involves cross libels between the United States as owner of the destroyer escort *Rachamkin* and two other naval vessels, and the Texas Company as owner of the tanker *Washington*, as well as actions for seven wrongful deaths against the Texas Company, arising out of a collision between the two named vessels off Cape Henry, Virginia, in November 1952. The circumstances leading to the accident may be summarized as follows:

"During the evening of November 13, and the early morning of November 14, 1952, a United States Naval Task Group, consisting of eleven vessels, was engaged in amphibious training maneuvers about 55 miles off the Virginia Capes (Pet. App. 43). At the time of the collision, the Task Group was proceeding westerly in formation at a course of 257° towards a prearranged destination off Virginia Beach. For some time prior to the collision, the Task Group had been maneuvering in screen formation; four of its vessels—all destroyer-type ships—were sailing in an arc approximately two miles in advance of the main body, which consisted of the flagship, the *USS Fremont*, and five other vessels surrounding it in a rough circle (Pet. App. 44). The Commodore or Task Group Commander was riding aboard the *Fremont*. A subordinate officer in command of the destroyer screen was riding aboard the *USS Hollis*, one of the screen destroyers (Pet. App. 31)."

The Task Group's maneuvers had been well publicized, and were or should have been anticipated by the crew of the *Washington* which was in route up the coast from a Gulf port bound for Philadelphia (Pet. App. 45).[1] The formation was brilliantly lighted and the night was clear with excellent visibility, light winds, and a smooth sea (Pet. App. 30).

The Texas Company tanker *Washington*, on a northerly course of 7½°, had approached between five and ten miles of the Task Group, which was moving roughly vertical to her course in a westerly direction, when her crew detected the lights of the Task Group on her starboard bow (Pet. App. 32). Despite the fact that she was the burdened vessel, and required to keep out of the way of crossing vessels to starboard (see *infra*, pp. 6, 17-18), the *Washington* did not alter her course to pass to the east of the Task Group, but continued on an intersecting course without reducing speed (Pet. App. 32).

The *Washington* had been observed for some time, both visually and by radar, by the flagship and other vessels of the Task Group. At 0150, the flagship *Fremont* fixed the *Washington* at a distance of 10 miles off its port bow on a collision course with the *Capricornus*, the northernmost vessel of the main group around the flagship (Pet. App. 32). The tanker's bearing and course was observed continuously thereafter, while the ships of the Task Group

[1] Forty copies of a Notice to Mariners covering the proposed operation had been mailed by the Coast Guard on November 10 to the Texas Company in New York and five copies to the Texas Company in Norfolk (Pet. App. 45). The maneuvers had received extensive newspaper publicity (Pet. App. 35).

maintained their course and speed as they were required to do by the rules of navigation (*infra*, pp. 6, 17-18).[1] Attempts (unsuccessful as it proved) were made by the flagship to communicate with the *Washington* by radio and light blinker (Pet. App. 39). At 0205, when danger of collision had become imminent, the Task Group Commander ordered the speed of the squadron reduced from 14 to 8 knots (Pet. App. 32). Two minutes later, a further reduction to five knots was ordered (Pet. App. 32). The tanker, despite her position as the burdened vessel, continued to steam at a speed of 11½ knots on a course intersecting the lights of ten large vessels. (Pet. App. 32, 33).

The *Washington's* lookout testified that he saw and reported the lights of a vessel later identified as the *Buchanan* at 0200 (Pet. App. 48). At some time after 0200, the tanker passed between the *Hollis* and the *Lloyd*, the two middle ships of the screen, altering course for a short time to the east (21½°) when she sighted the port side lights of the more northerly screen vessels fine on her starboard bow (Pet. App. 33).

After this near-collision, the tanker returned to her northerly course without reducing speed or sounding her whistle, subsequently crossing in front of the *Lloyd* and thereafter the *Capricornus*, the foremost and northernmost vessels respectively of the main

[1] As shown more fully *infra*, a vessel having the right of way in a crossing situation must maintain her course and speed, until such time as she is too close to maneuver to avoid imminent collision under the "special circumstances" rule (Pet. App. 57, *See infra*, pp. 17-18).

Task Group.[3] During the *Washington's* persistent attempt to pass through the body of the naval formation, the Task Group Commander, in accordance with the law and considerations of the formation's own safety, maintained a unified course and formation; the formation was powerless to do anything other than attempt to warn the *Washington*.[4]

During this period, from about 0150 to 0210, or approximately 20 minutes, the *U.S.S. Ruchamkin* was steaming northward to rejoin the formation after having been detached to embark soldiers which were to take part in subsequent training exercises (Pet. App. 33). The *Ruchamkin's* assigned position was as the northernmost vessel in the destroyer screen and she approached west of the formation intending to circle it to the north and resume her position in the screen (Pet. App. 33). When the *Ruchamkin* reported her readiness to join the formation to the Screen Com-

[3] The *Washington* had been on a collision course with the *Capricornus* prior to that vessel's reduction in speed (*supra*, p. 4). Article 22 of the International Rules for Navigation at Sea states (Pet. App. 57; 33 U.S.C. 107): "Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other."

[4] That is, the formation, having the right of way over the *Washington*, had a duty, as pointed out *supra*, to maintain its course and speed until collision was imminent. *Pacific-Atlantic Steamship Co.* v. *United States*, 175 F. 2d 632 (C.A. 4), certiorari denied, 338 U.S. 863. Since January 1, 1954, a privileged vessel in a crossing situation has been authorized by the International Rules to sound a danger signal of five or more short blasts when in doubt as to a burdened vessel's intentions (33 U.S.C. 147b). At the time of this collision, however, that expedient was not available to the Task Group.

mander on the *Hollis* at 0138,[5] she was first told to maintain her position, at that time roughly east northeast of the formation on a course parallel to it (Pet. App. 33). At 0149, the *Ruchamkin* was ordered by the Screen Commander to "expedite" to a position where she could rejoin the screen (Pet. App. 34).

After the formation had been ordered to reduce speed, the Screen Commander, at 0202, gave the *Ruchamkin* a second order to "continue to expedite" (Pet. App. 34). The *Washington* had been observed by the *Hollis* to turn easterly to 211½ a short time earlier (*supra*, p. 5) and the tanker's presence and position had been repeatedly reported by radio to all the ships of the squadron, including the *Ruchamkin* which was known to be in the vicinity. The Screen Commander therefore had no reason to believe that the *Ruchamkin* was unaware of the *Washington's* presence and location when he ordered the destroyer to come up in preparation for resuming her position in the screen (Pet. App. 34). In fact, however, the *Ruchamkin* had not heard the periodic radio messages reporting the *Washington's* course and position; and when her lookouts sighted the *Washington's* lights shortly before the collision, they were assumed to be one of the ships in the formation (Pet. App. 34).

As we have already noted, the *Washington's* lookout testified that he had seen the *Ruchamkin's* lights coming up from the northeast at 0200, ten minutes before

[5] The *Ruchamkin* also reported her position to the Task Group Commander at 0140, and received an acknowledgement, without orders, since she operated as part of the screen which was subject to the immediate command of the Screen Commander (Pet. App. 33).

the collision, and had reported them to the tanker's bridge (Pet. App. 48). Shortly thereafter, the tanker passed between two of the destroyers in the screen, and then crossed in front of the *Glynn* and the *Capricornus*, the northernmost ship of the main body which had reduced speed to let her by. After passing the *Capricornus*, several minutes elapsed while the tanker held her course oblivious of the *Buchanan*, which was approaching at high speed unaware of her identity (Pet. App. 49). The *Washington's* mate did not look at a radar set, which was in good working order and in operation on her bridge, after 0200 (Pet. App. 47). Both vessels attempted evasive action before collision at 0245, damaging each vessel and killing seven soldiers on board the *Buchanan* and injuring others (Pet. App. 33).

Cross libels *in rem* and *in personam* were filed by the owners of both vessels and suits seeking damages for wrongful death were brought against the Texas Company by representatives of the seven deceased soldiers.[6] At the hearing, the various actions were consolidated; the District Court entered an interlocutory decree against the United States in favor of the Texas Company, and dismissed the United States' cross libel and the wrongful death actions against the *Washington* and the Texas Company (Pet. App. 43).[7] In a memo-

[6] The wrongful death claimants did not sue the United States, since their decedents had been members of United States Armed Forces, and their sole right of suit was against the *Washington*.

[7] Prior to this action, proceedings on a petition for limitation of liability filed by the Texas Company in the Southern District of New York were stayed, on stipulation by all claimants in that proceeding that their claims (which then did not exceed the Texas Company's interest in its vessel for limitation purposes) would not be increased. *In re Texas Company*, 213 F. 2d

randum opinion, which it adopted as its findings and conclusions of law, the court found the *Ruchamkin* guilty of negligent navigation and exonerated the *Washington* of all fault. It also found the Screen Commander personally negligent in ordering the *Ruchamkin* forward at high speed to rejoin the formation, and the Task Group Commander negligent in not countermanding the order (Pet. App. 35-39). The *Ruchamkin* was held liable *in rem* and the United States *in personam* for the faults of the *Ruchamkin's* officers (Pet. App. 39). The United States was held liable *in personam* for the negligence of the Task Group Commander and the Screen Commander and the *Fremont* and *Hollis*, the flagships on which those officers were riding, were held liable *in rem* (Pet. App. 39, 40).

Both the wrongful death claimants and the United States appealed. In its appeal, the United States did not contest the negligence of the *Ruchamkin* but argued that as a matter of law the *Washington* could not be held free from fault. The United States also challenged the District Court's holding that the *Hollis* and *Fremont* could be subject to *in rem* liability for the personal negligence of tactical commanders riding on board who were not members of the crews of those vessels.

The Court of Appeals held that the *Washington* could not be exonerated from liability to the United States and the wrongful death claimants as a matter of law, since the tanker was under an obligation to ob-

479 (C.A. 2), certiorari denied, 318 U.S. 789. Subsequently, a libel by the Texas Company against the United States and other death and personal injury actions, were transferred from the Southern District of New York to the Eastern District of Virginia for consolidation and trial in the proceedings below.

serve the right hand rule in approaching both the flotilla and the individual ships comprising it, and that the tanker's failure to keep out of the way of the formation or its individual vessels was a proximate cause of the collision (Pet. App. 44-45).[5] The court also held that the *Washington's* crew had failed to maintain a proper lookout and that the collision would not have occurred except for this negligence (Pet. App. 47-49). The court rejected, as clearly erroneous and unsupported by evidence, the District Court's finding that the tanker's view of the *Ruchamkin* was blocked by the *Capricornus* or other vessels until collision became inevitable (Pet. App. 48). It was also decided, one judge dissenting, that the *Fremont* and the *Hollis* could be held to *in rem* liability only for the negligence of their crew members, not for the personal negligence of officers riding aboard them (Pet. App. 50-53).

ARGUMENT

The Fourth Circuit has held that *in rem* liability cannot be imposed on a vessel for personal negligence of a tactical officer riding aboard that vessel who was not a crew member and whose negligence had no bearing on the vessel's operation. In so holding, the court followed decisions of the Second Circuit and the English Court of Appeal, the only courts heretofore passing on the question, which have reached the only result consonant with the fundamentals of *in rem* jurisdiction. The court has also held here, on well settled

[5] The court below also held that the tanker's failure to sound its whistle, as required by Article 28 (Pet. App. 58), when it changed course shortly before the collision, was negligent as a matter of law (Pet. App. 50).

principles, that a "burdened" vessel cannot sail blindly into the midst of a brilliantly lighted convoy without at least incurring some degree of fault in the resulting collision. Both rulings involve narrow questions of maritime law on which there is no conflict of decisions, and the results reached are amply supported by precedent and reason. There is no occasion for review by this Court.

1. Since this Court's decision in *Canadian Aviator, Ltd.* v. *United States*, 324 U.S. 215, there can be no question that the United States is subject to suit as a private shipowner both *in personam* and *in rem* for injuries arising from the operation of its public vessels in all respects, except that no public vessel is subject to arrest or seizure and that proceedings must take the form of a libel *in personam*. 46 U.S.C. 781, 741, 742; Pet. App. 54-55. Construing the language of the Public Vessels Act in that case, the Court stated (324 U.S. at 224):

> The use of the phrase "caused by a public vessel" constitutes an adoption by Congress of the customary legal terminology of the admiralty law which refers to the vessel as causing the harm although the actual cause is the negligence of the personnel in the operation of the ship. Such personification of the vessel, treating it as a juristic person whose acts and omissions, although brought about by her personnel, are personal acts of the ship for which, as a juristic person, she is legally responsible, has long been recognized by this Court.

The United States does not dispute that it is subject to suit for the negligence of any of its officers contributing to the present collision, or to *in rem* liability

for any "negligence of [Government] personnel in the operation of [any] ship" here involved, if the negligence constituted "personal acts of the ship for which, as a juristic person, she is legally responsible." Thus, the Government has been held liable *in personam* for the negligence of the Task Group Commander and the Screen Commander, and liable both *in rem* and *in personam* for the acts of the *Rachamkin* and her crew.[7] But the United States has contended, and the court below has held, that the *Hollis* and *Fremont*, the flag vessels on which the Screen and Task Group Commanders were riding, were not subject to *in rem* liability for the negligence of those officers. No other result would be compatible with the basic character of *in rem* jurisdiction.

Under well-established principles, a vessel can be held liable *in rem* only for negligence of her crew acting on behalf of the vessel as a juristic person. *United States* v. *Brig Malek Adhel*, 2 How. 210, 234. The negligence must occur in the course of the vessel's operations while its crew are acting on its behalf; and the vessel's operation must be a causative factor in—although not necessarily the physical cause of—the damage. Thus, the negligence of a member of the vessel's crew not on board the vessel or acting on its behalf (*The Connie*, 267 Fed. 686 (C.A. 2)), or the negligence of one on board who is not acting on its be-

[7] Doubt expressed by the District Court (Pet. App. 40) whether the United States would be liable for the negligence of those officers, if not imputable to their flag vessels is untenable, since if the United States is not liable under the *Canadian Aviator* holding the Public Vessels Act subjects the Government to the same *in rem* and *in personam* liability as a private shipowner, 327 U.S. at 227, 228; then the Government necessarily would be liable under the Federal Tort Claims Act, 28 U.S.C. 1346 . . .

half or responsible for the vessel's navigation (*Publicover* v. *Alcoa S. S. Co.*, 168 F. 2d 672 (C.A. 2)), cannot be imputed to the vessel for the purposes of *in rem* liability. Similarly, while a vessel's owner is not liable *in personam* for the negligence of a compulsory pilot who is not the owner's servant, the vessel itself is liable *in rem*, since the pilot has assumed direct control over its navigation, and acts as its representative, and thus has become for all practical purposes a part of its crew. *The China*, 7 Wall. 53.[10]

This principle has been specifically applied to bar *in rem* liability for the negligence of an officer merely riding on board a vessel but not directly responsible for its navigation, whether the officer is or is not an employee of the ship's owner. In *Publicover* v. *Alcoa S. S. Co.*, 168 F. 2d 672 (C.A. 2), it was sought to hold *in rem* a merchant vessel sailing in a wartime convoy for the alleged negligence of its master, in his capacity as commodore of the convoy, in failing to direct the navigation of another vessel in the convoy which collided with a third ship. The Second Circuit (per Hand, L. J.) held (1) that the merchant vessel's owner could not be held *in personam* for the commodore's negligence, since he was not its servant in that capacity, having been designated by public authority; and (2) that the vessel could not be held *in rem* since the fault of the commodore, acting as commodore, could not be imputed to the vessel on *in rem* principles. 168 F. 2d at 678.

A corollary of this principle is that a vessel is not liable in rem for physical damage to another vessel where the negligence which caused the damage is that of the crew of the latter vessel. *Liverpool Borneo Steamship Co.* v. *Turkish Steamship Co.*, [illegible]

> Finally, even though we were to press the liability of the "Cyrus Field" as a fictitious jural person, she was not at fault; she did not contribute to the collision. The hypothesis is that it was the failure of the commodore to take charge of the "Alcoa Pilot's" navigation which was the fault.

Likewise, in *The Sobieski* [1949] L.R. Prob. 313, 320 (accord, *Glaucus and City of Florence* [1948] L.R. Prob. 95) the Court of Appeal held that the negligence of a British naval officer, serving as commander (senior escort officer) of a wartime convoy while riding on a destroyer escort, who failed to warn another vessel in the convoy of impending collision, could not be imputed to the escort which had its own captain; it was recognized, however, that the commander, and hence the British Government, could be held to *in personam* liability.

Here, as in *The Sobieski*, the two tactical commanders aboard the *Hollis* and the *Fremont* were not responsible for and did not control the navigation of those vessels. While the flag vessels' movements were directed by the tactical commanders to the same extent as other vessels in the squadron, the actual responsibility for navigating those vessels remained with their captains, and could not be delegated (Pet. App. 51, 52).

Cases relied on by petitioner to establish a contrary rule (Pet. 12-19) all deal with the situation where one vessel (*i.e.*, a ship and its captain and crew, not a third person lacking direct responsibility for its navigation) controls the movement of another vessel, either physically or by direct orders. Those cases all present the "tug-tow analogy" drawn by this Court in

Canadian Aviator, Ltd. v. *United States*, 324 U.S. 215, 228. Thus, *United States* v. *The Australia Star*, 172 F. 2d 472 (C.A. 2), held a Navy patrol boat liable *in rem* for failure to warn a vessel which it was escorting of an impending collision, in circumstances where "for all practical purposes" the escorted vessel "was as firmly fastened to the stern of [the patrol boat]" as if she had been in tow." *Canadian Aviator*, 324 U.S at 229.

The fact that the *Ruckamkin* was under orders to follow the sailing directions of the Screen Commander, therefore, does not impose *in rem* liability upon the *Hollis*, the vessel on which that officer was riding, for neither the *Hollis* nor its crew was responsible in any way for the orders of the tactical officers or the safe navigation of the *Ruckamkin* nor any other vessel of the formation. *In rem* admiralty liability, which imposes a fictional responsibility on a vessel for the acts of its crew, cannot be extended to the acts of an officer whose presence as a passenger on the vessel is merely coincidental to its operation as part of the formation.[11] As Mr. Justice Holmes said, for the Court in *The Eugene F. Moran*, 212 U.S. 466, 474, refusing to extend the fiction of *in rem* liability to hold liable a vessel physically causing damage, but otherwise guiltless:

> Possibly the survival of the fiction has been helped by the convenient security that it furnishes just as no doubt the responsibility of a master for a

[11] As the court below pointed out, the tactical commander could equally well have been stationed on land or on an airship ("Per Ange 451"). Indeed, in combined airsea, anti-submarine operations, the officer controlling the movements of the naval formation may be stationed in a "blimp," an airship, which could hardly be held to *in rem* liability.

> servant's torts, that he has done his best to prevent, has been helped by the feeling that it was desirable to have some one who was able to pay. See *Williamson* v. *Price*, 4 Martin, N.S. 399, 401; *Williams* v. *Jones*, 3 H. & C. 256, 263. But after all a fiction is not a satisfactory ground for taking one man's property to satisfy another man's wrong, and it should not be extended. There is a practical life and a difference in degree between the case where the harm is done by the mismanagement of the offending vessel and that where it is done by the mismanagement of another vessel to which the immediate but innocent instrument of harm is attached.

The distinction drawn by the court below between the present case and a "tug-tow" relationship is more than a technicality; it goes to the roots of *in rem* liability. Where the escort vessel is completely responsible for the navigation of the escorted vessel (the "tug-tow analogy"), the subordinate vessel is frequently held blameless for damage caused by the negligence of the escort. In such a case, the escort is the only vessel which can be held responsible *in rem* for the injury. In contrast, a vessel sailing in convoy subject to the orders of a commodore will be subject to *in rem* liability for any negligent maneuver on its part, even if taken in response to orders of a commodore, as in this case. Such a ship which is itself responsible for its own movements, cannot be said to be controlled in an *in rem* sense by an officer stationed on another vessel, since its own captain is finally responsible for its operations.

2. Petitioner also contends (Pet. 21-27) that the court below improperly substituted its own findings of fact for those of the District Court in holding the

Washington at-fault in the collision. The Fourth Circuit's opinion (Pet. App. 42-53), however, demonstrates that it concluded that the *Washington* was at fault as a matter of law for failing to comply with mandatory rules of navigation.

While the District Court absolved the *Washington*, the facts actually found by that court presented a classic "both-to-blame" situation in which two vessels, by violating the rules of navigation or ordinary principles of seamanship, had placed themselves in a situation where neither could avoid collision. The fault of the *Ratchaphin* was her excessive speed in closing with the formation when she knew or ought to have known of the dangers presented by the *Washington*.[12] The primary fault of the *Washington*, as the court below recognized, was her repeated violations of the starboard hand rule in not avoiding the formation or the various vessels constituting it.

The District Court recognized (Pet. App. 35) that the tanker was the burdened vessel under Articles 19, 21-23, of the Rules of Navigation (Pet. App. 57). Notwithstanding, it held as a matter of law that the tanker was relieved of the obligation to comply with the Rules because she did not identify the lights to her starboard as a naval formation, and thereafter had no choice but to intersect the formation, stating "There was no other way for her. Had she stopped or slowed she would have been overwhelmed by the flotilla" (Pet. App. 37). The Court of Appeals disagreed with both conclusions. It held that, even accepting the District Court's findings and assumptions,

[12] It should be noted that the District Court "rejected" the testimony of the Screen Commander and Air Task Group Commander in the *Ratchaphin* (Pet. App. 30).

the tanker on sighting the lights of a group of vessels on her starboard bow was required as a matter of law to alter course (in this case to eastward) if necessary to avoid crossing in front or through the formation (Pet. App. 45). The court also held that, assuming that the tanker was entitled to enter the formation, she was still obligated to avoid crossing in front of the *Lloyd*, the *Glynn*, the *Capricornus* and the *Rachamkin*, which she did in succession; had she turned eastward, or even reduced her speed, to pass to the stern of any one of those vessels, the collision would probably have been avoided (Pet. App. 45-47).

Both holdings of the court below are applications of the accepted principle that the starboard hand rule, which is both a statutory command and a principle of sound seamanship, must be obeyed regardless of other circumstances, wherever a burdened vessel has reason to believe she may be on a crossing course with vessels to starboard of her. *Pacific-Atlantic Steamship Co. v. United States*, 175 F. 2d 632 (C.A. 4), certiorari denied, 338 U.S. 868; *Ocean Steamship Co. v. United States*, 38 F. 2d 782 (C.A. 2); *The Pennsylvania*, 19 Wall. 125; *Belden v. Chase*, 150 U.S. 674, 699; *The Albert Dumois*, 177 U.S. 240, 249; *The Oregon*, 158 U.S. 186; *The F. J. Wolfe* [1946] L. R. Prob. 91, 79 Lloyd's List 341 (Ct. App.).

Additionally, the Court of Appeals held that the *Washington* was at fault in failing to give the required whistle signal (Pet. App. 58) before turning from 21½° to 71½° after crossing in front of the *Lloyd*, particularly in view of the fact that a signal might well have alerted the Screen Commander that the tanker had turned northward and thus was again on a intersecting course with the *Rachamkin* and the other ves-

sels (Pet. App. 50). In the absence of the statutory signal, the Screen Commander was entitled to assume that the *Washington* would continue eastward out of the formation. *Oriental Trading & Transport Co.* v. *Gulf Oil Corp.*, 173 F. 2d 108 (C.A. 2), certiorari denied, 337 U.S. 919. The District Court had absolved the *Washington* on the ground that the *Rachamkin* was not then in sight, but, as the court below points out (Pet. App. 50), this did not relieve the tanker of her obligation to the *Glynn* and *Capricornus* which were in sight and on intersecting courses with the tanker. The signal requirement is an absolute one; had a signal been given, the collision might well have been avoided. *States Steamship Co.* v. *Permanente Steamship Corp.*, 231 F. 2d 82 (C.A. 9).[13]

Finally, the Court of Appeals held that the *Washington's* contention that neither her lookout nor mate saw or could have seen the lights of the *Capricornus*, the *Rachamkin*, or other crossing vessels, could not be credited in view of the facts found by the District Court. It concluded that the tanker either had not kept a proper lookout (which might have avoided the collision), or had failed to act on what she did see (Pet. App. 47-49). In so holding, the court rejected as clearly erroneous the District Court's findings that the *Capricornus* had hidden the *Rachamkin* from the *Washington* until it was too late to avoid collision (Pet. App. 48).

The Court of Appeals' opinion indicates that in reaching the above conclusions it did not merely sub-

[13] The court also held that the *Washington* was at fault as a matter of law in failing to consult her radar for fifteen minutes prior to the collision, since she knew she was then maneuvering in the midst of a large number of ships. Pet. App. 47.

stitute its own view of the facts for that of the District Court. Rather, it held that the conclusions drawn by the District Court from findings as to what the *Washington* saw, or should have seen, could not be reconciled with its findings as a whole.[13] Hence, the review by the court below complied in all respects with Rule 52(a) of the Federal Rules of Civil Procedure.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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JULY 1957.

[13] On this aspect of the case the Court of Appeals was unanimous.